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# THE RAILROAD PROBLEM

A COLLECTION OF PAPERS ON VARIOUS ASPECTS OF THE RAILROAD  
PROBLEM AND PRESENTING MANY POINTS OF VIEW AND  
CONTENDING SUGGESTIONS CONCERNING ITS SOLUTION

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## TABLE OF CONTENTS

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### PART ONE

### RAILROAD LEGISLATION

#### 1. RAILROAD REGULATION: GENERAL PRINCIPLES

	PAGE
SOLVING THE RAILROAD PROBLEM .....	1
<i>T. W. Van Metre</i>	
THE SENATE COMMITTEE RAILROAD BILL .....	6
<i>Albert B. Cummins</i>	
THE HOUSE COMMITTEE RAILROAD BILL .....	28
<i>Schuyler Merritt</i>	
THE LEGISLATIVE PROGRAM OF THE INTERSTATE COMMERCE COMMISSION .....	36
<i>Balthasar H. Meyer</i>	
THE RELATIONS OF SHIPPER AND CARRIER .....	46
<i>Frank H. Dixon</i>	
OBJECTS OF RAILWAY LEGISLATION .....	54
<i>Frank W. Noxon</i>	
THE SCOPE AND FUNCTIONS OF A FEDERAL TRANSPORTATION BOARD .....	60
<i>Emory R. Johnson</i>	
THE HOUSE AND SENATE RAILROAD BILLS .....	66
<i>Richard Waterman</i>	
WHY RAILROAD REGULATION HAS FAILED .....	70
<i>Harry T. Newcomb</i>	
AN ENGINEER'S POINT OF VIEW .....	74
<i>H. Buel</i>	
THE REGULATION OF WATER CARRIERS .....	79
<i>R. A. Hiscano</i>	

## 2. RAILWAY EARNINGS AND CREDIT

THE RAILROADS AND THE INVESTOR .....	82 ✓
<i>Thomas Reed Powell</i>	
THE REVENUE NEEDS OF THE RAILROADS .....	87 ✓
<i>Howard Elliott</i>	
RAILROAD LEGISLATION .....	97 ✓
<i>Alfred P. Thom</i>	
RELATION OF VALUATION TO INVESTMENTS .....	107
<i>Thomas W. Hulme</i>	
RECONSTRUCTION OF RAILROAD CREDIT .....	112 ✓
<i>John E. Oldham</i>	
PENDING CONGRESSIONAL LEGISLATION AS AFFECTING OWNERS OF RAILROAD SECURITIES .....	120 ✓
<i>S. Davies Warfield</i>	
THE PRICE OF PRIVATE OWNERSHIP .....	130
<i>Pierpont V. Davis</i>	
ESSENTIALS OF A SOUND POLICY AS TO THE INVESTOR .....	135
<i>William L. Ransom</i>	
WHAT WARREN S. STONE THOUGHT IN 1911 .....	146
<i>Slason Thompson</i>	
RAILWAY CREDIT AND THE INTERSTATE COMMERCE COMMIS- SION .....	150
<i>Charles Whiting Baker</i>	

## 3. THE RAILROAD LABOR PROBLEM

THE HUMAN FACTOR IN THE RAILROAD BUSINESS .....	152
<i>Henry R. Seager</i>	
PENDING RAILWAY LEGISLATION .....	156
<i>Timothy Shea</i>	
RELATIONS OF RAILROADS AND THEIR EMPLOYEES .....	165
<i>W. G. Besler</i>	
THE ADJUSTMENT OF LABOR CONTROVERSIES .....	178
<i>W. N. Doak</i>	
LABOR AND THE DEMOCRATIC CONTROL OF RAILROADS .....	184
<i>Frederic C. Howe</i>	
SOME PRACTICAL ASPECTS OF THE RAILROAD PROBLEM .....	191
<i>Ivy L. Lee</i>	
DISCRIMINATIONS .....	195
<i>William Church Osborn</i>	

## 4. THE RAILROADS AND THE PUBLIC

THE IMPORTANCE OF THE PUBLIC INTEREST .....	198
<i>Edwin R. A. Seligman</i>	
THE RAILROADS AND THE PUBLIC .....	201
<i>Francis H. Sisson</i>	
THE OBJECTIONS TO AN IMMEDIATE RESUMPTION OF PRIVATE OPERATION .....	213
<i>George Foster Peabody</i>	
RELATION OF PUBLIC OWNERSHIP TO DEMOCRACY AND SOCIAL JUSTICE .....	218
<i>Albert M. Todd</i>	
GOVERNMENT OWNERSHIP THE ONLY SOLUTION .....	248
<i>W. P. Boland</i>	
NATIONALIZING THE RAILROADS .....	252
<i>Calvin Tomkins</i>	

## APPENDIX TO PART ONE

REPORT OF THE ANNUAL MEETING COMMITTEE .....	263
<i>Samuel McCune Lindsay</i>	

## PART TWO

## RAILROADS AND BUSINESS PROSPERITY

## 1. INTRODUCTION

RAILROAD REGULATION UNDER THE TRANSPORTATION ACT....	269
<i>T. W. Van Metre</i>	

## 2. LABOR PROVISIONS OF THE TRANSPORTATION ACT

RAILROAD LABOR AND THE LABOR PROBLEM .....	279
<i>Henry R. Seager</i>	

FUNCTIONS AND POLICIES OF THE RAILROAD LABOR BOARD....	283
<i>Frank H. Dixon</i>	

## LABOR POLICIES OF THE TRANSPORTATION ACT:

(a) From the Point of View of Railway Management....	293
<i>C. B. Heiserman</i>	
(b) From the Point of View of Railroad Employees ....	303
<i>W. N. Doak</i>	
(c) From the Standpoint of the Public Group .....	313
<i>Henry T. Hunt</i>	

## 3. RAILWAY POLICIES AND THE GENERAL WELFARE

THE FARMERS AND THE RAILROADS ..... 324  
*Henry C. Wallace*

TRANSPORTATION ACT OF 1920 ..... 338  
*Daniel Willard*

THE NEW BASIS OF RATE-MAKING ..... 348  
*Walker D. Hines*

## 4. FREIGHT RATES AND BUSINESS REVIVAL

HOW RAILROADS ADAPT THEMSELVES TO NATIONAL CONDI-  
 TIONS ..... 355  
*Albert Shaw*

THE TRANSPORTATION COST IN A BASIC INDUSTRY — STEEL  
 PRODUCTS ..... 359  
*Charles R. Hook*

HOW THE RAILROADS MAY RENDER MAXIMUM SERVICE ..... 363  
*William J. Cunningham*

WHAT RAILROADS ARE DOING TO INCREASE ECONOMY AND  
 EFFICIENCY OF OPERATION ..... 371  
*R. H. Aishton*

THE TRANSPORTATION FACTOR IN THE PRICE OF COAL ..... 374  
*J. D. A. Morrow*

## APPENDIX TO PART TWO

THE SEMI-ANNUAL MEETING, 1922, OF THE ACADEMY OF PO-  
 LITICAL SCIENCE ..... 387  
*Samuel McCune Lindsay*

## PART THREE

1. THE PROBLEM OF RAILROAD CONTROL ..... 389  
*Emory R. Johnson*

["Bound at end of Volume."]

2. PRACTICAL TESTS OF THE TRANSPORTATION ACT  
*A. M. Sakolski*

## FOREWORD

The publication of this volume containing all the papers on the railroad problem published by the Academy during the past three years, and its special distribution as a source of public reference, has been made possible through the generosity and public spirit of a small group of citizens, most of them railway executives or persons interested in railroad management or investments. It is hardly necessary to say that many of the papers do not present the views of any of these gentlemen nor of any group of railway executives or investors. It is their belief, however, as it is that of the officers and directors of the Academy who planned the program of the meetings at which many of these papers were originally presented, that it is wise statesmanship to present to the public all the facts and all points of view that are worthy of a hearing and the most varied suggestions for solutions of great public questions, in order that public opinion, which is the court of last resort and which forms slowly before reaching final conclusions, may be both enlightened and broadly informed. The railroad question, which is of such vital importance to the economic life of the country and affects its basic industries, will not be settled piece-meal as particular difficulties, whether strikes or threatened strikes or controversies over rates and public regulation, may be solved. A comprehensive national policy must be developed and consistently followed until America has a sound system of transportation under whatever plan of ownership, operation and control that will give the American people adequate service to meet the needs of their growing industries and the nation adequate protection for purposes of defence.

All of the papers contained in this volume have been copyrighted by the Academy of Political Science in the publications in which they originally appeared, but the Academy will gladly grant permission to reproduce part of them or all of them in any legitimate way that will increase their educational usefulness.

The papers contained in Part One of this volume are taken from the *Proceedings* of the Academy, volume 8, number 4, January 1920, which were edited by Professor Thurman William Van Metre of Columbia University; they cover the series of addresses and papers presented at the annual meeting of the Academy, November 21-22, 1919, at which the subject of "Railroad Legislation" was discussed in four sessions.

Part Two of this volume is taken from the *Proceedings* of the Academy, volume 10, number 1, July 1922, the volume entitled "Railroads and Business Prosperity", and edited by Professor Van Metre and Professor Parker Thomas Moon. It is a series of addresses and papers presented at the semi-annual meeting of the Academy, April 28, 1922.

Part Three contains two papers taken from the *Political Science Quarterly* for September, 1921, edited by Professor Moon.

## SOLVING THE RAILROAD PROBLEM

T. W. VAN METRE

Assistant Professor of Transportation, Columbia University

**A** DISTINGUISHED railroad president said in a recent address, "The railroad problem has not changed, nor is it shrouded in mystery. It is this: railroad earnings and credit must be created sufficient to support the existing railroad investment and attract the additional capital the transportation business requires in the public interest." At first thought one is inclined to say, "If the railroad problem is so simple why are we having all this hubbub and confusion about solving it?" Second thoughts, however, with their usual disagreeable habit of transforming simplicity into complexity, inform us that the railroad problem, as expressed by the distinguished railroad president, is the problem of every other business, and of every individual in the world. It is the old problem of making both ends meet. There is no mystery involved in the mere statement of this universal problem. But when we attempt to solve it simplicity vanishes and mystery enters; our simultaneous equations have altogether too many unknown quantities.

It is generally recognized that in creating the earnings sufficient to support the existing railroad investment and attract new capital three results will be achieved: (1) The public will receive reasonably adequate and efficient service from existing transportation facilities; (2) labor will have reasonably adequate wages and satisfactory working conditions; (3) investors will obtain a reasonable return on their invested capital. Before we can devise a program to bring about these results it is necessary to make certain inquiries. What is the reasonably adequate and efficient service which the public has a right to expect from existing transportation facilities? What are reasonable wages and working conditions for railroad labor? What is reasonable remuneration for railroad investors? The railroad problem begins to leave the realm of simplicity. Let us go farther. Who shall answer these questions? Upon what facts shall the answers be based? And after these questions are answered, what machinery shall we devise to translate the answers into effective action?

In view of the complexity of the railroad problem it is amaz-

ing how many infallible solutions have been presented. It is but fair to note that the author of each "plan" declaims with patriotic fervor, that his plan is best because it is the only one in which the public interest is the paramount consideration. There has never been a time in which the public interest has been so completely indentified with so many strongly opposed private interests.

Notwithstanding the extensive discussion of the railroad problem during recent months, little progress has been made toward a satisfactory solution. There have been no frank and specific replies to the questions which must be answered before a satisfactory program of regulation can be adopted. What answer do we have from investors, for instance, to the questions concerning the return on capital? It has been suggested by certain groups that rates should be made to yield a return of six per cent on property investment. What is the property investment in railroads? Railroad property accounts for the years preceding 1908 are quite worthless. Physical valuation will not show the value of investment. Capitalization does not show it. Some people are, by implication, urging the "validation" of present railroad capitalization, asserting that the water injected into railroad securities in times past has long since been absorbed through the process of putting "earnings back into the property." Even if this were admitted to be true, the question at once arises as to how we should consider these reinvested earnings in the regulation of rates.

Should we finally agree upon the investment value of the railroads, and decide that rates should be made to yield a return of six per cent on this value, we should have the problem of equalizing the earnings of "weak" and "strong" roads. The suggestion that the strong roads give up all their earnings in excess of six per cent. arouses bitter opposition among the officials and stockholders of the strong roads. They unanimously urge that capital receive an "incentive" in the way of adequate return. What is an adequate return? At least six per cent. Very well, here is a virtual guarantee of six per cent. with the understanding that all excess earnings be returned to the public treasury. But the confiscation of earnings above six per cent. would destroy "incentive." This incentive is a tender flower. It is hard to escape the conclusion that the chief stockholders and managers of the strong roads desire rates to be made high enough to insure adequate

returns for the weakest roads. It is pleasant for them to contemplate what such rates would mean. "The strong roads," they say, "should be allowed to earn well above any minimum so that in lean years the public will not be asked to pay increased rates." Present and past experiences with railroad companies and street car companies hardly justify confidence in statements of this nature. Owners of street railway monopolies, when making exorbitant profits out of a five-cent fare justify their returns because of the great "risk" assumed. When the risk overtakes them their refuge is not the surplus of fat years, but a "flexible" fare.

All classes of labor are now alert and suspicious. The wages of railroad employees have been raised again and again during the past four years, but the leaders still declare wages "inadequate." Veiled threats of strikes and hints regarding "conspiracies" on the part of railroad managers to reduce wages when private operation is restored serve to warn us of a constantly impending danger. Efforts are being made to pass anti-strike laws, and the laborer wants to know if the Government has any more right to commandeer underpaid labor than it has to require the unproductive investment of capital. Labor leaders denounce an anti-strike law which does not contain a "bill of rights," a labor code, which will insure to labor a reasonable wage. But the nearest approach which a labor leader makes to defining a reasonable wage is his never failing assertion of the inadequacy of the present wages being paid. Labor frowns upon all talk of making future reductions in wages commensurate with possible future reductions in the cost of living. What labor has gained, that will labor hold. Perhaps the leaders have a vague idea of getting something more than a minimum in order that they will not find it necessary in "lean years" to ask for increased pay.

There is little doubt that a satisfactory solution of our present railroad problem must be based upon some definite conception of what is a reasonable return to capital and to labor. Though it will probably never be possible to satisfy these two interests, some way must be found to appease them. In return the public must demand efficient and honest service from both capital and labor. We apparently never get tired, though we have abundant opportunity, of being told that the transportation system of the United States is the most efficient and economical transportation system in the world. In fact it is constantly repeated that all business activities, except the post-office, are carried on more ef-

ficiently in the United States than in any other country. We need to be awakened. How can anybody having a part in the operation and management of the rail-and-water terminal facilities of New York City boast about the efficiency of our transportation system? Moreover, the waste, inefficiency and incompetence displayed in New York have their counterparts in virtually all the other great terminals of the United States. If machinery is not created to bring about by compulsion the elimination of waste and inefficiency in our railroad terminals the public will be cheated of its due. Had the railroad managers used existing equipment with all possible efficiency in 1917 the Government would have remained out of the railroad business.

Another feature of the reasonably adequate and efficient service which the public has a right to demand is the development of cheap water transportation, especially along the sea-coasts, and the coordination of rail and water carriers. We talk to-day about increasing production. One of the greatest economic sins committed in this country has been the deliberate efforts of railroad interests to decrease the production of transportation by employing unfair methods to destroy water competition. Such sabotage deserves the strongest condemnation and it should not be allowed to continue.

It is not impossible that our attempts to solve the railroad problem will eventually result in government ownership of railroads. Though most students of transportation do not look with favor upon government ownership of railroads in the United States there are none who will deny its possibility and few who deny its probability. The promise of satisfactory legislation in the near future is not bright. If the roads are turned back to their owners without provision for the adequate protection of labor, capital, and the public, government ownership is inevitable.

Government ownership will probably not come by the adoption of the Plumb Plan. Nor will government ownership mean that the nation has turned to Socialism. If government ownership comes it will be an expedient, a measure of last resort, the only feasible way out of a troublesome situation. While government ownership is to be deprecated it is not to be feared. A great many men are exhibiting genuine concern about the rule of ninety-eight million people by two million. In so doing they cast most unpleasant reflections upon the intelligence of the ninety-eight million, of which they are themselves a part.

Whether we are to have government ownership in the near future depends entirely upon the ability of Congress to frame a law which will make private ownership and operation possible. It is impossible for Congress to enact a law which will satisfy all private interests. It would be unwise for Congress to enact a law which would completely satisfy any single private interest. And if the diverse interests involved in the settlement of the railroad problem do not soon adopt a spirit of concession and conciliation, and evince a willingness to have their cases tried on their merits, without the introduction of so much prejudiced testimony, any law which Congress may pass will create such discontent that private ownership will be immediately endangered.

## THE SENATE COMMITTEE RAILROAD BILL

ALBERT B. CUMMINS \*

U. S. Senator from Iowa, Chairman Senate Committee on Interstate  
Commerce

I THINK no one realizes more completely or fully than I do the magnitude and the difficulties of the task of railroad regulation. There are in this country something like 260,000 miles of main-track railway. These systems of railways serve 100,000,000 people and furnish them with their chief means of transportation and communication. It is obvious that any system of transportation in a commercial, civilized country is the basic fundamental industry of that country, for without adequate facilities for communication and transportation and without a service rendered for reasonable compensation the growth and development of the country is impossible.

The problem that we have before us is vastly more complicated and intricate than is presented in the transportation problem of any other country in the world. This is due to the extent of our country, the variety of its production, and the dissimilarity of conditions under which business is carried on, as well as the dissimilarity of conditions under which transportation is furnished.

I believe that transportation is a governmental function. A single reflection upon the conditions throughout the world as well as in our own country will demonstrate that the furnishing of transportation to a commercial people is a governmental function. Aside from those in the United States, substantially all of the railways of the world are owned and operated by the governments of the various countries. I might qualify that by saying that Great Britain has not yet become the owner of her railways, but her policy at this time is one that is the equivalent of government ownership and operation.

While I believe transportation to be a governmental function, I am nevertheless of the opinion that the policy of private ownership and operation of railroads should be continued in the United States. The only reason that I am in favor of private ownership and private operation is because I believe that better and cheaper transportation can be furnished to the people of this country

\* This article is an abridgment of the speech delivered by Senator Cummins in the Senate, as printed in the Congressional Record of December 4, 1919. It was prepared by the Editor with the consent of Senator Cummins.

through the instrumentality of private ownership and private operation than can be furnished to the people of the country through direct Government operation; but there is nothing inconsistent with the best forms of government in Government ownership and operation of our systems of transportation. The Government has the right to select the agencies or instrumentalities which will most certainly render to the people the service they require, and, if the Government believes, as I believe, that the services can be rendered and will be rendered more adequately and more cheaply through private corporations under strict public supervision it has the right, of course, and it is its duty, of course, to select such agencies for the purpose of rendering the service which all the people require.

Private operation of railways cannot be continued as a permanent policy unless there is a radical change in our system of regulation. There is but one course which will insure successful private operation. Our Interstate Commerce Commission has been a faithful, intelligent body of men. They have made mistakes now and then, which I have not hesitated to criticize; but, on the whole, I think they have attempted to do their duty as they have seen their duty. It has been, however, utterly impossible for the Interstate Commerce Commission to establish a body of rates in the United States that would enable the railway systems of the Nation to maintain themselves. It has been utterly impossible for any body of men to make a system of rates that will sustain the weaker railroads of the country without giving the stronger railroads an income excessive and intolerable in its extent; and there lies the great, fundamental obstacle in our system of rate making. The Interstate Commerce Commission can no more give to each railway of the United States the return to which it is fairly entitled than it can annihilate distance or overcome any other law of nature; and for that reason, when the Government took possession of the railroads, some of the railroads were earning enormous and excessive incomes, while other railroads were struggling against adversity, and were utterly incapable of rendering to their communities the service to which those communities were fairly entitled; and it was obvious, I think, to the students of the subject, long before the Government took possession, that we must adopt some plan that would remove this inherent, fundamental difficulty.

According to the decisions of the Supreme Court of the United

States, and according to the views of every other tribunal in all the world of which I have ever heard, they have this general idea with regard to the regulation of public utilities: That is to say, if a public utility is fairly constructed, if it is properly and efficiently managed, it has a right under the Constitution to earn a fair return upon the investment, upon the value of the property which renders the services—not upon the value of the property as determined by a capitalization of its earnings under a given body of rates—but it has a constitutional right to earn, as against regulation, a fair return upon the value of the property—that is, its investment—if it has been honestly constructed and is efficiently operated. The Supreme Court of the United States has declared that doctrine over and over again. It is idle for us to attempt, even if we were to desire to attempt, to escape the principle which the courts have laid down. It is a just principle; it is fair and honest; and I, for one, do not desire to escape it.

In the case of a railroad that is earning, we will say, 1 per cent upon that fair investment under honest management, why is it not earning more than 1 per cent? It is not earning more than 1 per cent for two reasons: First, our regulating tribunals have determined the rates upon which it shall do business. We have interfered with its liberty in the transaction of its business to that extent; but if we have not interfered directly we have attached those rates to some competitor which can do business upon, we will assume, the body of rates which I have premised, and that renders the unfortunately situated property incapable of earning more. Now, I believe that any such system is not only unfair but it is unconstitutional as well.

We are agreed that we can not raise the rates upon the weaker properties so that they will be self-sustaining, because that would give to the stronger properties, which move 70 per cent of the business of the United States, an income so excessive that it would not be tolerated for a single month. Therefore that solution must be discarded. We can not give to the stronger properties the rates which would return for them no more than a fair interest upon the value of their property and that alone, because that means death to the weaker properties which must compete with them in traffic, and, of course, upon the same terms, so far as rates are concerned. So we must inquire further. We must find some other way in which we can maintain the general trans-

portation system of the United States and promote the welfare of our people. We must find some other way in which to do it. How can we accomplish it?

You may inquire as you will, you may study it as deeply as you may, but you will finally reach the conclusion that it can only be done through consolidation. There are various kinds of consolidation. The problem can be solved by Government ownership because that is complete consolidation. If the Government owned and operated all the railroads of the United States it would, I take it, establish charges for transportation which would pay the cost of maintenance and operation and the interest upon whatever indebtedness might be created in acquiring the properties. It would then be compelled either to raise the rates and charges or to appropriate from the Treasury, if our past history is to be accepted as a lamp for our guidance in the future, something like a billion dollars a year in order to construct such additions, betterments, and enlargements as the progress and growth of the country would demand.

That is one way in which this problem can be reached, and it is a perfectly logical way in which to reach it, because it then reduces the transportation of the United States to a common level, and the United States becomes responsible for furnishing facilities in every quarter of the country.

There are two kinds of consolidation which may be pursued in private ownership with continued private operation. The first is complete consolidation of all the railway properties of the United States in one corporation. That is a plan which has some advantages. There are unquestionably some advantages in complete unification, complete control over all the railroads of the United States as a single transportation facility.

The plan adopted by the Senate Committee, however, is consolidation into comparatively few systems. The bill provides that they shall be consolidated in not less than 20 nor more than 35 systems. I think it ought to be not less than 16 nor more than 30 or 35 systems, but that probably does not affect the merit of the proposal itself.

I am in favor of comparatively few systems because it will permit the play of competition in service, and, although you will regard me as exceedingly heterodox and possibly as unobservant of the history of the past, I say **competition** in rates also.

This suggestion which has gone abroad over the country and which everybody has received and apparently accepted that there is no competition in rates under the regulation which we have provided is not well founded.

I am in favor of several systems so related to each other that they can carry traffic for substantially the same cost as compared with the value of their property, because it does permit, it invites, it commands that honorable rivalry in business which in my judgment is the mainspring of success in every enterprise. I am looking toward advances of socialism with extreme regret mainly because I believe that that theory of Government destroys the initiative, the energy, the progress of mankind. I want to preserve in the railway service all of those moving forces which can possibly be retained.

I do not attach so great importance to the competition or rivalry so far as rates are concerned as I do to the rivalry in service. The latter begins with a desire to please the people who either ride upon trains or whose property is transported from one place to another. It means attention, it means courtesy, it means a concern for the public mind that could not be secured in any other way than through the opportunity of the public to pass from one service to another. It means infinitely more when we come to consider the ease with which one patron is served and the ease with which the desires of another may be denied; the furnishing of cars promptly, the movement of cars speedily, the effort made in every quarter, through every employee, to do the work at hand in the most efficient manner in which it is capable of being done.

This is the reason the committee has decided that it would be better to consolidate the railroads of the United States into not less than 20 nor more than 35 systems, in order to accomplish, first, the possibility of imposing a given body of rates upon the carriers with the outcome that each of the systems would earn substantially the same net return as compared with the value of the property employed in the service; and, second, in order to give this great business, this overpowering business, the same motive for efficiency and excellence that we observe, and hope we always will observe, in every other great venture.

There can be little question of the practicability of a division of the railway properties into not less than 20 nor more than 35 systems that will accomplish the purposes I have described. The

committee has not acted without the utmost consideration on that question and without all the information that it could secure. The committee—and I speak more confidently of my own convictions—knows that it is practicable to divide the railways of the United States into not less than 20 nor more than 35 systems, so that tested by the business of the three years before the war—and that is the period to which we must all resort in order to obtain information upon that subject—the net earnings of each system compared with the value of the property rendering the service, I care not how the value of the property is ascertained—will be so nearly equal that the difference will be negligible. I venture the prophecy that if the provisions of this bill shall ever go into effect the governmental body which is appointed to make the division and to carry out the provisions of the bill will be able to divide the country into 20 systems, and there will not be the difference of one-quarter of 1 per cent in the earnings, the net income, of the several systems as compared with the value of the properties as fixed by the Interstate Commerce Commission.

Then, if we pursue the policy of private ownership, we will have a body of railroads upon which the Interstate Commerce Commission can act, doing justice both to the people and to those who have invested their money in the properties. Then the Interstate Commerce Commission can make rates that will pay to the carriers, as nearly as human foresight can provide, just enough to make a fair return upon the value of the property.

I have pointed out at some length the views of the committee—and they are my own views as well—upon this fundamental proposal, because it is the heart of the bill. If it is not thought desirable to make this advance toward the regulation of these public utilities, my judgment would be that it is not advisable to pass the bill at all, for if the roads are to be returned under the regulations which formerly existed, believing, as I do, that private operation under such conditions is impossible and that it will end in utter collapse, I will necessarily find myself advocating the assumption upon the part of the Government of the duty of owning and operating our transportation facilities.

How is this consolidation to be accomplished? The bill proposes to create a Transportation Board, which is to undertake to divide all the railways of the United States, with some immaterial exceptions, into not less than 20 nor more than 35 systems.

The discretion between 20 and 35 is vested in the Board by section 9 of the bill, which reads as follows:

SEC. 9. It is hereby declared to be the policy of the United States in the exercise of its authority to regulate commerce among the States and with foreign nations and its other constitutional powers, that the railways of the continental United States shall, as soon as may be practicable, and in the manner hereinafter provided, be divided in ownership and for operation into not less than 20 nor more than 35 separate and distinct systems, each of said systems to be owned and operated by a distinct corporation organized or reorganized under this act.

In the aforesaid division of the said railways into such systems competition shall be preserved as fully as possible, and wherever practicable the existing routes and channels of trade and commerce shall be maintained. The several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the value of the properties through which the service is rendered shall be the same so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of the railway properties involved in the comparison.

This might be called the charter of the new system. It is further developed in section 10 by providing that the Transportation Board shall make this division and then give public notice to all who are interested of a hearing upon it, and at that hearing all who may be interested either from the capital standpoint or the labor standpoint or the shipping standpoint will be heard, and after that hearing is concluded then the Board adopts a plan, whatever plan may seem to it wise, and if that plan of division is approved by the Interstate Commerce Commission it becomes final, save as it may be modified upon subsequent application by anyone who may present a good cause for reconsideration in that respect.

For a period of seven years the consolidations are voluntary. If any railway company desires to organize a Federal corporation under the provisions of this bill, a new corporation can be organized. If, on the other hand, a corporation already organized desires to reorganize so as to become a Federal corporation, it may do so under the terms of this bill; but the consolidation that takes place during the seven years must be either through the medium of a corporation organized under the terms of the bill or through a corporation reorganized under the terms of the bill. We have made practically the same provision for reincorporating State corporations that was made long ago for the reincorporation of national banks, turning a national bank from a State institution into a Federal institution. One or the other of these two things must precede any consolidation which takes place under the bill.

I may say a word with regard to the seven years. The only reason for postponing compulsory consolidation for a single moment, in my judgment, is that the work of the Interstate Commerce Commission in valuing the railroad properties may be completed. It is said that this work will have been finished in the course of two or three years.

It may, however, be five years before it is finally and fully done; and inasmuch as these incorporations, whether reorganizing or originally incorporating, must be based upon the actual value of the railroad properties, it was quite essential that some time be given to the Interstate Commerce Commission to complete its work. In the case of a voluntary consolidation, it would be the duty of the Interstate Commerce Commission at once to go forward to the ascertainment of the value of the property immediately concerned in the voluntary consolidation, and to complete that particular part of the work at the earliest possible moment. And this leads me, now, to suggest an additional reason for the value which I attach to the consolidation.

All of us know that there has been a great deal of controversy, very much suspicion, infinite distrust among the people with respect to the value of railroad property as compared with the capitalization. Constitutionally we are unable to determine the value of railroad property, or even to indicate or declare the elements which a judicial tribunal shall consider in determining that value. Nevertheless, it is of the highest importance that in some way or other the feeling on the part of the people that they are called upon to contribute a revenue which is to be distributed upon unfounded capital shall be removed. It can only be removed in one of two ways. It must either be removed by ascertaining that the present capitalization is not greater than it should be—a contingency which does not meet my view of it—or it may be removed by reducing the capitalization to the real value of the property upon which the people are called upon to pay a return. This bill provides that the Interstate Commerce Commission shall ascertain the value of this property as the consolidations take place, and that the capitalization of these new corporations which are brought into existence in the manner I have described shall not exceed the value of the railroad property; and once this principle is adopted and once these consolidations shall have taken place, the terror which we all have in mind, known as the unearned increment, can no longer disturb the American people.

I want as much as anyone can want that the people shall be called upon to pay only upon an actual value; and while I know that we can not determine for the past years what value is and what elements it shall contain, for the future we can; and if these consolidations are carried into effect the future is safe, so far as unearned increment is concerned and so far as values are concerned. We will have that matter settled for all time.

Section 6 of the bill provides that the territory and the railroads of the United States shall be divided by the Interstate Commerce Commission into rate-making districts, as many as the Commission thinks desirable. Having established the districts and having ascertained the value of the property in a given district, the Commission is directed to make rates or to approve rates that will as nearly as may be return an aggregate net operating income for all the railroads of that district equal to  $5\frac{1}{2}$  per cent on the value of the property in that district. The committee believes that  $5\frac{1}{2}$  per cent fairly represents the policy of Congress with respect to a return upon railway property. Originally, as I introduced the bill from the subcommittee, instead of a  $5\frac{1}{2}$  per cent rate, the provision was for a fair return upon the value of the property, but it was believed by the majority of the committee that it would be better for Congress to declare the policy rather than to transfer it or commit it to any regulating body. So for the first time in the history of railway regulation it is suggested that Congress shall declare what it regards as a fair return upon the value of property rendering a public service, and that fair return, according to the provisions of the bill, is  $5\frac{1}{2}$  per cent upon the value of the property involved.

This  $5\frac{1}{2}$  per cent does not relate to capitalization; it does not relate to capital stock; it does not relate to outside investments vast in their extent which some of the companies own and hold for profit. It relates only to the property which renders service to the public.

The bill also gives to the Interstate Commerce Commission authority to increase that basis by one-half of 1 per cent, if it so desires to do, solely for the purpose of creating a fund for expenditures for what are known as nonproductive improvements and which are not under any circumstances to be capitalized, but which, in substance, will be held by the railway companies in trust for the public.

Now, let us see what  $5\frac{1}{2}$  per cent will do. Five and a half

per cent upon the value of the property in a given rate-making district does not mean that each railroad shall have  $5\frac{1}{2}$  per cent upon the value of its property. It means that one railroad will earn 8 per cent upon the value of its property, another railroad will earn 3 per cent or 5 per cent, some of them 2 per cent, some of them possibly, as high as 10 per cent. That arises from the disparity in the earning capacity of the roads. When you put a given body of rates upon the territory lying between Chicago and New York, we will say, rates which must be used in common by the New York Central, the Pennsylvania, the Baltimore & Ohio, the Erie, the Chesapeake & Ohio, and so on, one of those roads will earn very much more than  $5\frac{1}{2}$  per cent while another will earn very much less than  $5\frac{1}{2}$  per cent. That is the insoluble problem under present conditions. We can not escape it in a moment; nothing can remove it except the consolidation of which I have spoken. However, until that consolidation takes place we must deal with it as best we can. That brings me to another feature of the section to which I have been alluding and which I intend to discuss just as briefly as possible.

The bill proposes that any railway company which receives an operating income during any year of more than 6 per cent upon the value of its property shall divide equally the excess between 6 and 7 per cent between a company reserve fund and a general railroad contingent fund. The first portion belongs to the company itself, the latter belongs to the Government of the United States. The first is to be used by the company whenever its operating income falls below 6 per cent. It is to be accumulated from year to year until it reaches 5 per cent upon the value of the property. After that time the company retains one-third of the excess above 6 per cent and pays to the Transportation Board or to the Government two-thirds of the excess. The excess above 7 per cent goes one-fourth to the company reserve fund and three-fourths to the Government. The Government contingent fund has no limit and is to be used by the Transportation Board to advance the general transportation interests of the United States. However, it is not given so free a hand as my remarks might indicate, for it is provided in the bill that the promotion of the general transportation interests must be effected either by the purchase of equipment and of transportation facilities to be rented or leased to the weaker railroad companies, or it must be used by loaning to the weaker companies sums of

money to be expended in the purchase of facilities to render the service which the people require. That is the best that the committee could do in this transition period to equalize the spread in the earnings of the companies.

We were constantly impressed with the idea that we must accomplish in some way the maintenance of the weaker companies. We know that, judged by the ordinary standards of credit, when they go into the markets of the country they will be unable to borrow the money necessary to keep their properties in that condition necessary for economical and efficient use. So we propose to take from the larger railroad companies a portion of their excess earnings above 6 per cent and devote them to increasing the facilities in the hands of the companies which are unable to purchase or construct them for themselves.

I regard it not only as one of the most vital but most equitable features of the bill, as much and bitterly as it has been attacked.

I will say one word with regard to the attacks upon that feature of the bill. Singularly enough, it is assailed from two quarters. The railway executives, representing the railroads, attack it bitterly on the ground that it is not only unjust but unconstitutional, and some very enthusiastic citizens of the country who have no interest in railways attack it on the ground that it is an approach toward socialism or communism and ought not, therefore, to be fostered, encouraged, or adopted.

A moment's consideration may not remove doubt with regard to its constitutionality, for I can not hope to remove a doubt in a moment that has been instilled by so distinguished an authority as an ex-Justice of the Supreme Court of the United States; but I at least can point out the path along which the committee traveled in reaching the conclusion that the provision was and is constitutional.

Ex-Justice Hughes has rendered an opinion in which he says that that part of the bill is unconstitutional because it takes property from its owner without just compensation. Ex-Senator Elihu Root, occupying an equally commanding position at the bar of the country, is just as confident that it is constitutional. The lawyers have ranged themselves, a great many of them, upon one side or the other of this question; but I am bound to say that so far as they have been organized up to this time, a decided preponderance in number, at least, will be found upon the side of the committee, which holds that the provision is constitu-

tional. To me there is no question about it. I do not want to disparage the learning of any man, certainly not his intelligence, but to me the proposition that this provision is unconstitutional means the destruction of all regulation. If it is true that we can not limit the earnings of a public utility, a common carrier, we might as well abandon our efforts to protect the people in any system of regulation.

I have no question at all with regard to either the justice of the provision or its constitutionality. We have pursued this narrow, cramped, and restrictive policy long enough. If Congress is not able to lift itself above the murky prejudices of former years, and examine transportation from a national standpoint, and establish those regulations which are necessary for the welfare of all the people, we must either go at once to Government ownership and operation, or leave the railway companies untrammelled and unrestricted to impose on the people of the country for their service just such charges as they may think best.

Section 24 of the bill relates to the issuance of railway securities. For years there has been a constant and general demand that in some way or other the Federal Government shall undertake the supervision of the issuance of railway securities. A bill to that end passed the House at one time and was reported favorably by the Committee on Interstate Commerce of the Senate. However, it did not receive consideration in the Senate, and therefore never became a law. But I think there is no real opposition to a provision which confers upon the Interstate Commerce Commission, or some other Federal agency, the supervision of the issuance of railway securities, in that way relieving the railway companies of the regulation of 40 of the 48 States of the Union.

Section 34 is an enlargement of the car-service act, which it is unnecessary for me to comment upon at any great length. The car-service act passed in 1917 was intended to give to the Government a larger function with respect to the movement of commodities, the movement of trains, the supply of cars, and all matters pertaining to the general disposition of our commerce. In this section too, we have attempted to give the Government the right to prevent construction of new lines. The very difficulties we have heard urged so often have arisen at times because railroads have been constructed where and when they ought not to have

been constructed. So we have given to the Interstate Commerce Commission, in connection with the Board, the jurisdiction to prevent the construction of new lines where obviously the construction would simply impose another burden upon the public without adding anything to the public welfare.

We have also given to the Government wider and broader power with respect to furnishing adequate and safe facilities, so that the Commission or the Board can command railroad companies to equip their lines with proper facilities and to procure the necessary cars and engines to transact their business with promptitude, all the while, of course, conditioned upon the power of the companies to comply with the demands or the commands of the Government. It would be idle to require a company that could not secure the money with which to do it to buy additional cars or additional engines, or anything of that kind.

We have rewritten in section 37 what is known as the long-and-short-haul clause. That will give rise undoubtedly to some discussion. We have not adopted the positive, rigid, long-haul provision. We still permit, under section 37 of the bill, some discretion on the part of the Interstate Commerce Commission. We have said to the Interstate Commerce Commission that it could grant the privilege to any company to charge more for a shorter than for a longer distance in the same direction, but that in doing so the rate for the longer distance must be found by the Commission to be a compensatory rate.

A compensatory rate, I assume, means a rate which will enable the railway company charging it to defray the cost of maintenance and operation and that will also bear its just share of the return upon capital.

Another modification that we have made in section 4 of the interstate commerce act is that where there are two competitive land lines, one longer than the other, that under no circumstances must the longer line charge more to an intermediate point not farther from the origin than the haul on the short line than it charges for the competitive point. It must not charge more for the same distance than the rate charged on the short line. That, I think, will correct a good many injustices that have occurred in the application of the law as it exists.

We are all familiar with what is known as the anti-pooling section of the Interstate Commerce Act. That section now reads:

SEC. 5. (as amended Aug. 24, 1912). That it shall be unlawful for any

[530]

common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

That is the law at the present time. The change that is proposed in this section of the act to regulate commerce is to insert after the word "that" the words:

Except upon specific approval by order of the commission as in this section provided.

Then there is added the following:

*Provided*, That whenever the commission shall be of the opinion, after hearing, upon application of any carrier or carriers, by railway or water, subject to this act, that the division of traffic or earnings between any such carrier or carriers will be in the interest of better service to the public, economy in operation, or otherwise of advantage to the convenience of commerce and the people, and will tend to equalize earnings between the said carriers and will not unduly restrain competition, the commission shall have authority, by order, to approve and authorize such division of traffic or earnings between carriers under such rules and regulations, and for such consideration as between said carriers and upon such terms and conditions, and for such length of time, as shall be found by the commission to be just and reasonable in terms.

The commission may from time to time, for good cause shown, make such supplemental orders in the premises as it may deem necessary or appropriate, and may by any such supplemental order modify or set aside the provisions of any previous order as to the extent of the division, or as to the rules, regulations, terms, conditions, or consideration currently moving in respect of any such divisions so theretofore approved and authorized. The same procedure as to filing of applications and serving of notice of hearing upon proper State authorities with opportunity to be heard shall be had as is provided in section 24 of this act relating to "securities."

It is apparent that this provision is not only an important one but is a radical departure from the policy which we have heretofore pursued. It is intended in this way to give to the Interstate Commerce Commission the authority, practically, to unify the railroads of the country prior to the consolidation which is provided for in the bill. All of us have observed that the one great advantage of Government ownership is the unification which may take place and the ability on the part of common carriers to choose that route for the traffic which is most economical and which will best serve the public interest. It was thought by the committee that, at least in the transition period—and this has no limitation in point of time—but especially for the transition period, the commission should have the power to control the railway companies in the respect I have just mentioned.

For years there has been a conflict between the jurisdiction

of the Federal Government and the jurisdiction of the State governments with regard to the adjustment of rates. All know that the Constitution of the United States confers upon Congress the authority to regulate commerce among the States and with foreign nations. Obviously, this authority is limited to the regulation or control of interstate commerce and matters that are inseparably connected with or incident to interstate commerce. The Supreme Court of the United States has had occasion in at least three separate cases to discuss the subject.

Many are familiar with what is known as the Shreveport decision. In that series of cases it was alleged that the State of Texas had established rates for intrastate traffic—that is, for the movement of traffic from one point in the State to another point in the State—which discriminated against the rates which the Interstate Commerce Commission had established for the movement of traffic from points beyond the State into the State, and the particular community which complained and which gave the name to the case I have mentioned was Shreveport. It complained that it could not do business with the State of Texas in competition with rivals located in the State, for the reason that the business men within the State were shipping freight at a much lower rate, comparatively, than the Interstate Commerce Commission had found to be reasonable from Shreveport into the State.

I need not follow that case in all its phases; but it finally reached the Supreme Court of the United States and the Supreme Court held that the authority of the Federal Government as it could be vested in the Interstate Commerce Commission extended to the removal of a discrimination between the interstate rates and the intrastate rates, but no authority had been given by Congress to the Commission to declare what the intrastate rate should be in comparison with the interstate rate.

The committee has attempted simply to express the decisions of the Supreme Court of the United States. We have not attempted to carry the authority of Congress beyond the exact point ruled by the Supreme Court in the cases to which I have referred; and the only thing we have done in the matter has been to confer upon the Interstate Commerce Commission the authority to remove the discrimination, when established in a proper proceeding before that body—an authority which it does not now have. As it is now, all that can be done is for the Commission to go forward from time to time and condemn and enjoin

the State rates until they finally reach the level which, in the judgment of the commission, is no discrimination.

Section 44 of the bill deals with the problem of the length of time that the commission may suspend rates which are filed by the carrier. As the law now is, each carrier has a right, and is required, if it desires to change the rates, to file its schedule of rates with the Interstate Commerce Commission. The Commission can then, upon summary investigation or inquiry, suspend those rates pending an investigation. Under the law, as it is, it has the authority to suspend them for 120 days, and then it was given the authority if it did not finish the inquiry within that time, to extend the time for another period of six months. The latter period has been shortened in this bill to a period of 30 days.

The reason for that is this: In the first place, the Interstate Commerce Commission has been overworked. There is no body of men in the employ of the Government, or exercising governmental functions, upon which so great a weight of labor has fallen as the Interstate Commerce Commission, and it is utterly impossible for it to fulfill its full duties as the law now is. But we have undertaken in this bill to create a new governmental function known as the Transportation Board, and we have given to that board many of the important duties which are now performed by the Interstate Commerce Commission, and endeavored in that way to relieve the latter body of some of its labor; and we hope that we have accomplished that purpose to such an extent as that the Commission will be able promptly to decide all the matters which are brought before it.

Broadly speaking, we have left with the Interstate Commerce Commission what might be described as semi or quasi judicial powers, rate making in all its phases, the valuation of railroad property in all its aspects, accounting absolutely necessary as an incident to rate making and to valuation. These are in the main the great branches of labor which are left with the Interstate Commerce Commission. The purely administrative duties, those duties which have to do with the physical operation of the railway properties, are transferred to the Transportation Board.

I desire to mention briefly section 45. It is entirely new, and it is an effort to coordinate land and ocean traffic. We have not given to the Interstate Commerce Commission any authority to regulate or control or to fix rates for what is known as port-to-port traffic, whether inland or exterior, and we do not propose to

do so. Everybody understands that we can not put upon ocean traffic or coastwise or coast-to-coast traffic or even upon river traffic the same regulations that are very advisable with regard to land traffic.

We are now hoping to enlarge our foreign business. We are endeavoring to make it as easy as possible for the business men of America to ship their goods anywhere throughout the world. The Shipping Board is trying, I think faithfully, to establish a series of ocean routes with boats having regular sailings and regular routes as well.

The great corporations of the country, the great producers, such as the United States Steel Corporation or other corporations of that character, are able to maintain their agents everywhere, which serve as a medium of information to such shippers, and they know when the boats sail and where they go and what the rates are, and are in every way able to reach a foreign country or foreign countries in the most convenient way. That is not true of the small shippers of the land. They do not know when these boats sail and where they go. They do not know what the ordinary rates are upon these ocean-going ships.

Section 45 provides that every ocean-going steamship company and every coastwise or coast-to-coast company with a regular route and with regular sailings shall file with the Transportation Board a schedule containing the dates of the sailings of its ships and the routes over which its ships travel, together with the ordinary rates which are charged for transportation. These schedules are required to be filed with the transportation board, and they are then given to the land carriers, the railroads, and the railway companies are required to maintain that compilation of information in every office designated by the Transportation Board. It is the thought of the committee that the Board would designate the important or the chief centers of production and of shipment.

Then any man who has a shipment destined for some foreign port, for Liverpool, Hongkong, Melbourne, or for San Francisco or New Orleans, even though he may not be able to maintain a commission man at the port or any other of the conveniences which the great shippers enjoy, may take to any railroad office in the country his shipment and deliver it to the land carrier, and the land carrier must issue to him a through bill of lading. It then becomes the duty of the land carrier to deliver the shipment

to the boat in whose care it is consigned, and the land carrier must absorb in the charge for the land carriage the cost of transfer from the railway train to the boat. In that way we will have established all over the United States a system which I think will tend to increase largely our export trade and coast-to-coast trade.

The part of the bill which I have reserved for final consideration is that which proposes that the Government shall adjudicate the disputes which may arise between employees of railway companies and the corporations, and which forbids a conspiracy or combination for the purpose of preventing the movement of commodities in interstate commerce.

I venture to say that no provision in any bill submitted to Congress in recent years has been more generally discussed throughout the country than the one to which I have just referred. There are some very extravagant praises for it; there are some very unjust denunciations of it. I look upon it as a vital part not only of this bill but vital part of our policy in the future so far as the basic industries of America are concerned. The committee has endeavored to find a solution of one of the most complicated and difficult problems ever presented to a legislative body. I am not prepared to affirm that the committee has discovered the only solution, and I am sure its members will be very glad to receive any suggestions that may make the arrangement which we have provided for more just or more efficient; but I speak for substantially every member of the committee, a very large majority of the committee, when I say that it is our profound conviction that the civilization of America—I was about to say the civilization of the world—can not continue, can not endure unless organized society can find some plan to preserve industrial peace and order. To me the thought that to accomplish justice for those who may be interested in any dispute it is necessary to either freeze or starve the American people is unthinkable and intolerable.

I have always, I believe, entertained for men who worked not sympathy—for men who work need no sympathy—but I believe that I have always held for them the keenest interest in the struggles in which they have been engaged and the most sanguine hope of their ultimate success in obtaining the justice to which I believe they are entitled. But that does not settle this controversy.

The committee recognized that transportation is the basic industry of the Nation. It may not be more important from one

aspect than many others, but none of the others can be conducted or carried on without transportation. Leave New York without transportation for two weeks and thousands of people will either starve or freeze, according to the season; indeed, they may do both. What I say of New York is true of Philadelphia, of Chicago, and of every great center of population.

We cannot contemplate that situation with any complacency at all. If we can not find some way in which to avoid a contingency of that kind, then our boasted and vaunted institutions are mere shadows, and we should escape from them as speedily as possible. There must be some way in which a democracy can administer justice to all its citizens, which will render them so far content that they will be willing to carry on their vocations with reasonable regularity and continuity.

I was the author of a somewhat famous statement or declaration in what is known as the Clayton anti-trust law that the labor of a human being is neither a commodity nor an article of commerce. I believed in the truth of that statement profoundly then, and I believe in it now with even deeper conviction. The labor of a human being is not a commodity; it ought not to be dealt with as a commodity; it ought not to be judged as a commodity; for it is a part of human energy that may solicit and ought to receive the same high consideration from the world, from every legislative body, as all other energies of the mind or the body. But I am just as much opposed to Mr. Foster dealing with human labor as a commodity as I am opposed to Mr. Gary dealing with it as a commodity.

It is just as fatal to the welfare of the United States to allow the American Federation of Labor to deal with labor as a commodity or as an article of commerce as it is to allow the National Association of Manufacturers to deal with it as an article of commerce or as a commodity. This declaration, for which I make no apology and of which I am as proud as I am of any other act of my life, means that labor is to be lifted above the rules which apply to mere inanimate things; it means that the laborer is a man and entitled to all the rights of a man, and that he should no more sell himself to a labor union than he should sell himself to a manufacturer. It applies to both and all with equal force and strength.

I do not want to be understood that I am opposed to labor unions. On the contrary, I think they are an essential part of

our industrial organization. I do not believe that we could long survive in peace and in order without labor unions. I think the gathering together of men in every occupation is not only defensible but I think it is highly beneficial and helpful in the maintenance of law and order. The laboring men in any particular enterprise or in any particular calling have just as much right to come together and work to promote their own interests and lift themselves up, if they can, in the great scale of human society as have the men of capital or the men of the professions, the men who labor, as it is said, with their minds instead of with their hands. I do not want it to be understood that there is in this bill or that there is in my mind any antipathy, any hostility, anything but admiration for labor unions.

I believe also in collective bargaining. There is no escape from collective bargaining. It is the decree of this age from which we ought not to attempt to escape. This bill is founded upon the necessity for labor unions, so far as the provisions to which I now have reference are concerned. It could not operate without the presence of labor unions. This bill recognizes collective bargaining; it can not be administered efficiently without collective bargaining.

It is said—it has been said to our committee—that this provision of the bill contravenes the natural rights of man, and is therefore unconstitutional. It is a very common thing to hear it said that this manacles the workingman, puts shackles upon his limbs, and reduces him to involuntary servitude. Nothing could be more wicked than an assertion of that character. This bill does not interfere with the rights of any employee of a railroad company or any official of any railroad company, because this bill applies equally to every person who serves a common carrier, if the common carrier is subject to the act to regulate commerce. The bill does not prevent, interfere with, or embarrass any man who desires to leave his employment. He can quit, or a hundred of them or a thousand of them can quit whenever they desire so to do. But I am not willing to allow the statement to go unchallenged that it is a fundamental and a constitutional right that every man can enjoy to quit his employment whenever he pleases. That is not true.

This bill does not interfere with his right at all; but a soldier can not quit whenever he desires. He can not cease his employment. An engineer upon a railway train can not quit when-

ever he may desire to quit. He can not leave his engine and his train so that human life would be imperiled, or so that property, even, might be injured. A physician or surgeon can not quit his employment whenever he may desire to quit, either morally or legally. He can not leave a dangerous operation half performed because it is his pleasure no longer to continue the work of his profession. I am mentioning these things simply to show that it is not true, broadly and fundamentally, that every man in the world can quit what he is doing at any moment he chooses to quit. The human right—and I am now speaking of the individual right rather than the group right—is subject to higher considerations than his pleasure.

This bill punishes only a combination or agreement between railway employees, and when I use the word "employees" I mean all the employees of the corporation, whatever their rank may be. Even if I were to grant that the individual right to cease employment or quit is perfect and complete, I could not grant that the right to enter into a combination or conspiracy to accomplish a purpose inimical to the welfare of society is a natural or constitutional right. This bill does not control the individual, but it controls the combination, the agreement, and it declares that if two or more persons, being employees of a carrier subject to the act to regulate commerce, shall enter into an agreement or a combination to suspend or prevent the movement in interstate commerce of commodities on which we are all dependent for life and for health for the purpose of enforcing some demand or claim against their employer, that such persons shall be guilty of a misdemeanor and shall be punished accordingly.

What right have I, who may believe I have a just claim against you, to enter into a conspiracy or combination or agreement with some other man or with some other men to deprive you of the necessities of life until you yield to the demand which I have made upon you? It is monstrous. It cannot be defended in any court of morals. A course of that kind cannot be defended in any court of civilization and progress.

The bill provides what it believes to be impartial tribunals for the adjudication of all disputes between the carriers and their employees. These tribunals, the details of which I shall not discuss, have jurisdiction of all the disputes which may come up from time to time between the railway corporations and their

employees. Remembering that we have provided a tribunal which we believe to be a just, fair, and impartial tribunal for the adjudication of all controversies of the character I have described, I hope that this thought will be in every mind, that we are substituting the justice of the Government of the United States for the justice which wage workers have hoped to secure through the strike. We are simply exchanging one instrumentality for another. We are offering an opportunity to secure justice which does not involve this awful sacrifice, which does not involve the wreck and ruin of industry, of homes, and of character. We are offering to do in controversies out of which railway strikes may arise just what our courts of justice have done for centuries with respect to controversies between man and man. Hitherto we have not regarded it as necessary that our Government should undertake the adjudication which is here provided for, and I have been very slow and very reluctant to go forward to that duty. But I perceive, and I have long perceived, that it is necessary, if we are to have regularity and continuity of employment. Therefore I am willing, on the part of my Government, to undertake to do full and complete justice, so far as wages and working conditions are concerned, to those who enter into employment of this character. I believe, and believe from the bottom of my heart, that the laboring men of America will be more apt to secure justice or approach perfect justice through the intervention of these tribunals for the settlement of their disputes than they have ever been able to secure through the medium of the strike.

## THE HOUSE COMMITTEE RAILROAD BILL

HON. SCHUYLER MERRITT, M.C.,

Member House Committee on Interstate and Foreign Commerce

**A**FTER sitting for three months with the Interstate Commerce Committee in hearings which, when printed, occupied between three and four thousand pages, and after spending several weeks shaping the Esch Bill in Committee and passing it through the House, I had the pleasure of a call from the President of the Academy of Political Science, who did me the honor to ask me to summarize and characterize the bill in a twenty-minute address at the Academy's annual meeting. I immediately thought of the old and well-known story of the colored gentleman who was asked for a loan of ten dollars. He said, "Boss, I thank you for the compliment, but I haven't got the money."

I think before I even attempt to summarize the bill which has been passed by the House it is only justice for me to pay tribute to the sub-committee of the House, headed by Mr. Esch of Wisconsin, who is also the Chairman of the full Committee, for their labors in this field. Mr. Esch has been a member of the Interstate Commerce Committee for many years; he has taken part in all the great measures which have been passed in recent years to regulate the railways of this country. He is a man of great ability, with a judicial and honest mind. And if, as I believe, the labors of himself and his Committee have resulted in some contribution to a proper solution of this question, Mr. Esch is entitled to and should receive the appreciation of bodies like this and of the whole country.

Those of you who are old enough—not many, I think—will remember that when a conservative deacon in the church of Henry Ward Beecher reproached him for something startling or daring which he had said during a sermon, Beecher replied, "If you only knew some of the things I didn't say you would praise me instead of blame me." And so I think that whatever you may criticize in the bill which we actually have passed, you will at least praise us for some things that we have not passed. You will agree that we did well in not putting anything into the

bill which even looked toward public ownership. The Committee, from testimony and from independent study, became convinced that in all the states which had public ownership, such for example as Australia and France, where the conditions were not different from ours, the service was poorer, was more expensive and was tainted by politics. Nor was the Committee much influenced by the very long and able presentation of the plan called the Plumb Plan. This plan, as you know, contemplated the purchase of all the railways of the United States by the Government and turning them over to be operated by the members practically of the four great railway brotherhoods.

It was called in some of the literature that was put out an experiment or possibly a demonstration in democracy in the ownership and control of the railways. I agree that the Plumb Plan would be the embodiment of democracy in ownership because all the bills for buying the railroads amounting to some eighteen or twenty billions of dollars would be footed by the public. But, when it comes to the control, which is to be vested, under that plan, in fifteen directors, two-thirds of whom are to be elected in one way or another by the approximately two million employees of the railroads, that seems to me to be a case of introducing into this country the Soviet on a large scale, because you have two million people, something less than two per cent of the population, electing the directors to run the property which is bought by all the people. That property controls the entire industrial life of this country.

In addition to that, you will perceive that these two million men would be both employers and employed, and, if anything could tend to expense and to demoralization more than that, I do not know what it is. If I should characterize the Plumb Plan in a large way, I should say that it was a plan for two per cent of the population to elect a board of fifteen men to control the industrial life of this country, and secondly, a plan to drive brains out of running the railroads. I say that last, because you can see what a tremendous amount of wire pulling and politics would occur at once among the two million men on these roads to elect people to run them.

As it happens, the estimated wealth of the State of New York, the entire State of New York, is just about the same amount as is invested in railways to-day, and the number of voters is just about the same in the State of New York as would be in the

railroads under the Plumb Plan. Some of you know how much politics goes on in the effort to run the State of New York. But I do not think it would be a circumstance to the politics that would go on in the effort to run the railways, because the prize would be so much greater and the power would be so much greater. I think we can all agree that a book which President Hadley wrote thirty years ago contained a prediction which circumstances have shown to be very true in connection with state-owned railways and to be still more true with the relation to railways run under this Plumb Plan. President Hadley in his book said that the state is more likely to tax industry than to foster it, that state management is more costly than private management, that the political danger would be very great, that politics would tend to corrupt the railway management and the railway management would tend to corrupt politics.

I should not have taken even this amount of time to speak of the Plumb plan were it not for the fatal facility which so many people have for being deluded by pleasant sounding words, and the fatal habit which they have also of failing to examine the real effects of the plan covered by these words.

So, for those reasons, as well as others, it seemed to us that our duty and the work before us was to retain, so far as we could, that far-sightedness, that efficiency, and that business ability which had made the railway system of the United States the greatest system with the lowest rates and the best system to serve the people that the world has ever seen.

Now, in its structure, the bill which has passed the House of Representatives takes up three phases of the matter. First, the actual return of the roads; second, the necessary period for reestablishment of personnel and ordinary operation of the roads under their owners, and, third, the question of their continued operation.

In the beginning, the Committee felt bound to take into account the reasons why this problem exists. They could not take up the problem as if the roads were in the hands of the government by negotiation or through the will of their owners. They had to consider the problem as it exists, which is, that the roads were taken over without the consent of their owners, by operation of law.

During the period of operation by the government many hundreds of millions of debts were incurred by the government on

behalf of the roads, without the consent of the owners, without their advice and at war prices. Now, this, it seemed to the Committee, and I think it would seem to any fair man, makes a very strong equitable claim against the government on behalf of the roads, and practically forces the government, during this period of reconstruction, at least, and to the extent that the debts were incurred during war service, to act as banker for the roads. That involves, of course, funding in some form the debts which the roads will owe to the government on settlement and the bill provides (without troubling you with too much detail and too many figures) that the debts on account of capital expenditures shall be repaid in fifteen years, payments to begin in five years. I may say, in passing, that this particular clause was the object of a great deal of controversy in the House and the bill as finally amended into its present form is not in this respect, as many think, and I am one of them, quite so generous to the roads as it should be. And, when I say generous to the roads, I mean in the interest of the proper solution of the whole question.

It may be proper for me at this point to make a comparison with the Senate committee bill whose refunding provision is more generous to the roads than the provision which the House passed. Therefore in the bill which finally passes the Senate and comes to conference, there may be a favorable modification. Of course that is in the future and I cannot tell. The other debts of the roads are to be paid to the government in demand notes secured by such collateral as may be available. Then there is a provision that if, owing to their needs or the conditions of the money market during two years after the roads are returned, they find themselves short of funds, there is created a revolving fund of two hundred and fifty million dollars, from which the President in his discretion and under proper safeguards may make loans to the roads. And finally, to give the roads time to turn about, and to recover their organizations and go on their normal way, the guarantee of the standard return is continued for six months after the roads are taken over.

That takes care of the transition period, it is hoped. Then comes the question of continued operation; and while I do not pretend to know the Senate Bill as intimately as I do the House Bill, at this point the two bills separate widely. It was strongly urged before the Senate and before the House that a Transportation Board be created which should be a body apart from the

Interstate Commerce Commission, and which should take certain of the executive duties of the Commission, but apart from that and more important than that, this Board was to take a broad view of the transportation needs and the transportation facilities and service of the United States without regard to particular roads, and to consider what was to the interest of the United States by way of proper transportation facilities. The Board also was to consider what operating revenues were necessary adequately to support such service. It was to make certain recommendations to Congress and to the Interstate Commerce Commission and the Commission was to make rates based on facts and recommendations which were to be put before them by this Transportation Board.

That is substantially in the Senate Bill, but the House of Representatives, and its Committee, has been and is averse to adding to the great number of Boards and Committees now in Washington transacting the business of the United States. A board created by Congress differs from almost everything else created by man. You all know that most human creations contain within themselves the forces of decay and the great difficulty is to keep them alive, but when you create a board in Washington it seems to contain the seed of eternal life and growth, and the difficult thing is to kill it. So we thought that we would rather stick to the evils that we know about than to create others that we knew not of. Our effort was to increase the powers and perfect the means of operation of the Interstate Commerce Commission. We tried to profit by the knowledge and experience which have come during the war from unified control, so we have given to the Commission enlarged powers by way of unifying terminal facilities and the use of rolling stock, etc., so that the greatest benefit can be had from facilities which now exist. We have gone quite far; if you had been in the House and heard the oratory of the representatives of some states you would have thought we had gone too far, in extending the powers of the Interstate Commerce Commission over all rates, both state and interstate. Those of you who are lawyers know the *Shreveport* case. We have put that case into statute law and extended it, I think the lawyers believe, somewhat beyond the Supreme Court decision. If I can put my hand upon it I will read a portion of the act. I do not want to take too much of your time, but the matter is important. Great difficulty, confusion and loss has been

experienced by railroads because state commissions made rates for intrastate business far below interstate rates. The low state rates caused loss to the roads and threw an undue burden on interstate business. It is now provided that if any road thinks it is discriminated against by a state commission, it can bring a complaint before a joint session of the Interstate Commission and the State Commission involved and then the act goes on as follows:

"The Commission shall have authority, after full hearing, to make such findings and orders as may in its judgment tend to remove any undue advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue burden upon interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, and such findings or orders shall be observed while in effect by the carriers parties to such proceeding affected thereby, *the law of any State or the decision or order of any State authority to the contrary notwithstanding.*"

That paragraph will commend itself to the lawyers present, I think, as a very beneficial part of the act and one which is very far reaching. Another provision of our act which I think good, is this, that after these rates are established by law as fair and reasonable, every road can make all the money and all the profit it can out of these legal rates, and what is better, keep it after it has made it. It was urged by a large and influential body of gentlemen, and very ably argued that rates should be established to produce a definite percentage of return on the value of the property used in transportation. Our Committee felt, and the House acted upon its recommendation that if that were done, it would go far toward removing incentive and toward removing initiative, efficiency and the necessity of economy. Then we thought further that if after a road by good management had made a certain percentage of profit, it would certainly not be any incentive to further effort to take away from it the extra profit it might earn by economy and good judgment and foresight.

However much the act which we framed may be criticized in some of its details, it has these broad features, that it gives the Interstate Commerce Commission power to control the roads, it gives the Commission power and modifies to that extent the anti-trust laws, to permit combinations and pooling so that the entire

system of railroads in this country can be treated as a whole and used as a whole for the benefit of the commerce of the whole country. In addition to that, it does not destroy competition of service, it does not take from a carrier the earnings which it can get from good service, economy and efficiency and from wise foresight in making extensions or combinations.

I have left to the last a subject which is perhaps the most difficult of all, and that is the question of labor on the railroads. The provision which is in the bill that passed was put in as an amendment. The provision which the Committee reported to the House was not one which, in the current phrase, had "teeth." It was really a mild form of compulsory arbitration. But that was defeated, and the present clause put into the bill. That was done in the haste of debate, under what is called in the House, the five-minute rule, so that extended debate and examination were hardly possible. I cannot help feeling that if the provision which is in the bill could have been debated and could have been understood, it would hardly have been passed. This bill on its face would look like a bill for conciliation and arbitration, but if it is examined critically, it will be found that if disputes which arise are not settled by certain boards created by the bill,—if it comes to a point where the men cannot agree with the carriers,—that the only way to get that dispute before the final board of appeals created by the bill is by the consent of the officers of the brotherhoods. In other words, it is compulsory arbitration if the brotherhoods want it, and is nothing if they do not want it. There is no possible way for the roads to get any of the disputes before these boards without the consent of the brotherhoods. That is one thing that seems to me to be one-sided.

There is another section of the bill which provides that the wage rates and other arrangements which have been made under the stress of war shall remain at their present level until the employees will agree that they may be lowered. That, you see, is introducing into this Bill the worst feature of the Adamson Act, only raised to the *nth* power. I cannot believe that even the men themselves when they come to understand this will feel that that is a fair arrangement. It seems to me before this bill becomes a law that those parts of it at least must be examined carefully and modified to the extent of making them equally fair to both sides.

I think perhaps that what I have said indicates what

you all knew before I said it—that this railway question is one of the most difficult and intricate questions which has ever come up for settlement in this country. I doubt if anyone who has not sat for months in a committee room listening to representatives of carriers and shippers and representatives of the employees, all the way from Maine to Texas, and from New York to Alaska, can appreciate how complex and how far reaching these questions are. I doubt if any other question can more truly be said to touch every man and woman in this country. What we were impressed with, and most agreeably impressed with during all the hearings was the broad spirit which was shown by all representatives of all interests before the Committee. They all appreciated that the problem was not local, was not confined to them or to their interest, but it had to do with the erecting in this country of a great transportation machine, and you know, and they know, that in order to make that machine an efficient machine, it must be supported. Without sufficient rates to make reparation for wear and tear and to create a credit basis for extensions and new roads to meet the growth of this country, the machine will be overloaded and break down. Therefore the influence of this great Academy and of all thinking people must be exerted to the end that the country will view the question in a broad way. And you must see to it that men in Congress and elsewhere are impressed with the importance, not of criticising what has been done in the past, not of trying to make this generation suffer for the sins of the past generation, but of considering facts as they are and doing all we can to help this great transportation system, because if that is prosperous, the whole country will and must be prosperous.

I can truly say to you that the Interstate Commerce Committee of the House and I believe the House itself, approached this question in that spirit and the result of its efforts, I think, is a contribution to the solution of the question.

# THE LEGISLATIVE PROGRAM OF THE INTERSTATE COMMERCE COMMISSION

BALTHASAR H. MEYER  
Interstate Commerce Commissioner

**B**EFORE outlining what has been called the legislative program of the Interstate Commerce Commission I wish to offer two preliminary observations.

First, to speak of a legislative program of the Interstate Commerce Commission is to use figurative language. We are not a legislative body. We do not legislate. We therefore have no legislative program in the accepted sense of the term. We are an arm of Congress. We are responsible directly and solely to it. It is not our function to prescribe public policy but rather to conform our actions to the public policy prescribed by Congress. To the extent that we exercise administrative discretion within the limits of the act to regulate commerce, that discretion is exercised in the direction of what we construe to be the intention of Congress. However, we are required from time to time to make recommendations to Congress. Section 21 of the act to regulate commerce reads, in part, as follows:

\* \* The Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, \* \* \* This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary. \* \* \*

In addition to recommendations made in our annual reports we have occasionally sent special reports to Congress making recommendations on particular subjects. The most noteworthy of these were the reports submitted in December, 1917 and 1918, respectively.

In common doubtless with others, I have been asked many times to suggest a "permanent solution of the railroad problem." I have invariably expressed my inability to do so. I do not believe any man can offer a permanent solution of the railroad problem. There is no such thing as a permanent solution. The problem is permanent, not the solution. This is the second preliminary observation that I wish to offer.

The railway itself as we now know it may not prove to be as permanent an institution as we are accustomed to think it to be. Even though time should demonstrate it to be such, it does not follow that legislation governing the use of the railroad and prescribing relations between owners and users and workers can be permanent. Perhaps no lesson in history has been more forcefully and repeatedly brought home to every thinking man than the changing character of our institutions. One of the highest functions of the legislator and the administrator is to adapt these institutions to the conditions of time, place and circumstance. Having accomplished this adaptation, all has been done that can be done. This applies to railways and the railway program as much as it applies to taxation, education, suffrage, police regulations and all other matters governing or affecting the conduct and well-being of citizens. A legislative program for railways which is the best that competent men can elaborate for to-day is not necessarily the best to be applied five or ten years from now when conditions may be different. Scarcely a session of Congress or of a state legislature passes but what some statute relating to railways is enacted because new conditions require new laws. Congress has found it necessary to conduct extensive hearings and undertake fundamental changes in laws relating to railways about every 10 years or oftener ever since the conduct of railways has become a national problem. Naturally legislators look to the future and attempt to adjust legislation to future requirements as fully as possible; but generally it is impossible to foresee requirements and contingencies five or ten years hence. I speak at some length of this for the reason that it can help no one to labor under the delusion that any man or body of men can work out a real, permanent solution.

The statutory structure must constantly be readjusted to the social and economic structure. Laws generally follow, not precede, economic and social changes. They should follow changes as closely as possible. Some times they follow with painful slowness so that by the time they are finally written upon the books the changes which they were designed to meet have been superseded by other changes which they cannot meet and which themselves require still further changes. From this point of view the best "permanent" solution is that which is most adaptable to changing conditions. I am here referring to legislation relating to the general conduct of the railways. When we contemplate

questions of rates and service we see that which is ever changing and ever present. No matter what legislative and administrative changes are made, questions of rates and service remain. In general and in principle they are always the same. Whether Congress adopts the Cummins plan, the Esch plan, the Lenroot plan, the Plumb plan, the Railway Executives' plan, the Warfield plan, the Chamber of Commerce plan, or any other plan or combination of plans, problems of rates and service will demand consideration on their merits and in their varied aspects of changing industrial and social conditions and interests.

Coming now concretely to the legislative program of the Interstate Commerce Commission I wish to cite briefly from our annual report to Congress in December, 1918:

While we do not deem the present conditions and moment opportune in which to recommend concrete proposals for legislation, we may indicate certain lines of inquiry which must be pursued in order to reach sound conclusions.

Whatever line of policy is determined upon, the fundamental aim or purpose should be to secure transportation systems that will be adequate for the nation's needs even in time of national stress or peril and that will furnish to the public safe, adequate, and efficient transportation at the lowest cost consistent with that service. To this end there should be provision for (1) the prompt merger without friction of all the carriers' lines, facilities, and organizations into a continental and unified system in time of stress or emergency; (2) merger within proper limits of the carriers' lines and facilities in such part and to such extent as may be necessary in the general public interest to meet the reasonable demands of our domestic and foreign commerce; (3) limitation of railway construction to the necessities and convenience of the government and of the public, and assuring construction to the point of these limitations; and (4) development and encouragement of inland waterways and coordination of rail and water transportation systems.

This statement was followed by an enumeration of various plans which we thought might be brought to the attention of Congress. Next we described considerations which required attention if the policy of private control and operation or public ownership and operation, respectively, were to be adopted.

Not long after our annual report had been submitted to Congress we were asked by the Committee on Interstate Commerce of the United States Senate to submit "available data and other information bearing on the railroad situation in the country." Responsive to this request we submitted a statement outlining our views in more detail than had been done in the annual report. These views were predicated upon the continuance of private ownership and operation under regulation, and were approved by every member of the Commission as it was then constituted except one. The statement was framed upon the outline in our

annual report relating to private ownership, for by this time we had decided to favor that alternative. Its contents are indicated as follows:

If the policy of private ownership and operation under regulation is continued, the following subjects will require legislative consideration: (1) Revision of limitations upon united or cooperative activities among common carriers by rail or by water; (2) emancipation of railway operation from financial dictation; (3) regulation of issues of securities; (4) establishment of a relationship between Federal and state authority which will eliminate the twilight zone of jurisdiction and under which a harmonious rate structure and adequate service can be secured, state and interstate; (5) restrictions governing the treatment of competitive as compared with noncompetitive traffic; (6) the most efficient utilization of equipment and provision for distributing the burden of furnishing equipment on an equitable basis among the respective carriers; (7) a more liberal use of terminal facilities in the interest of free movement of commerce; and (8) limitations within which common carrier facilities and services may be furnished by shippers or receivers of freight.

Some time after we had received the request from the Senate Committee, a similar request was made by the Committee on Interstate and Foreign Commerce of the House of Representatives. We met these requests as fully as possible. In addition to the formal statement we submitted statistical data and other information, supplemented by extensive oral testimony most ably presented by our senior colleague, Commissioner Clark.

The above in brief is what has been called the legislative program of the Interstate Commerce Commission. As previously stated, a number of other plans have been brought to the attention of both houses of Congress. It is not for me to say what Congress ought to do. Both the Senate and the House committees have worked strenuously for many months. They have heard what we have had to say respecting our suggestions and what others have had to say about their respective plans. Both committees have reported bills to their respective houses. The decision now rests with Congress. It will do what it conceives to be in the best interests of the whole country.

I now wish to offer some observations with respect to the legislative recommendations stated above within the time limits imposed by your program. Fortunately others will deal with various important related subjects which I cannot even mention.

First of all, our recommendations are based upon experience and past development. They have grown out of that which has been, and therefore have their roots in the past. To illustrate, from the beginning of railway history, individual lines have been extended through construction, purchase or lease into systems;

and through a continuing process of construction and consolidation great systems have been developed. We favor a continuance of that character of development within the limits and under the guidance of the statute, whereas in the past that development has taken place largely outside of the law.

We have not deemed it necessary to work out special regulatory provisions relating to the so-called poor or weak roads as contrasted with the so-called strong or affluent roads. Railroads have in the past earned varying rates of profit. We see no reason why they should not continue to do so in the future. In view of well understood imperfections in the investment in property accounts of carriers it has been generally impossible to know just what different carriers' earnings have been on the real investment. When the necessary facts are available I expect they will show that in some, if not in many, cases the so-called weak road is actually making more money on such business as it does than many of the strong or supposedly affluent roads. This feature of the railroad situation has been practically ignored.

Our recommendations do not lead to a hybrid system of railroads in the United States. There will result from them no such linking of private and public finance and accounts that it will be difficult to know what is public and what is private and what the true results of operation may be from the standpoint of both public and private interest. Personally, I have a strong aversion toward all plans that propose to weave together public and private interests in such a way that a clear-cut accounting representing either is practically impossible. Rather than accept some of these plans I should deem it the part of wisdom to enter upon government ownership and operation outright. I do not believe the time has come for this country to enter upon public ownership of railroads. I believe that what we have recommended will meet the present situation much more effectively and with less danger of failure than government ownership. However, if the country should be driven into government ownership it will undertake it with courage and vision and make it a success. It can be done. I do not wish to see it forced upon the country at this time.

Our recommendations do not assume to be a panacea for all the difficulties in the world of transportation. It is a practical program which rests upon experience and observation. I am well aware that various apparently simple plans have their sup-

porters. If a simple plan will accomplish that which is sought, it is preferable to a plan less simple. That requires no argument. However, I do not believe that any one who will analyze objectively the entire transportation situation in this country to-day will find a state of affairs that lends itself to treatment under a simple uniform rule. This great country is full of mountains and valleys and plains, rivers and lakes, big cities and little cities, energetic people pursuing many different paths which cross and recross one another in an infinite variety of ways. Such a country cannot be placed under the yoke of a simple formula such as would conceivably be possible if the entire continent were to be emptied of its houses and their occupants and the entire history of this nation reconstructed by settling the continent anew under the guidance of such a simple rule, and in those parts of the continent where the railroad under such a rule would permit them to go. Our cities are where they are. It is an inhuman policy that would through the agency of transportation wipe some of them out as completely as if an earthquake were to swallow them. Our railroads are where they are. Excepting those, few in number, that ought possibly to be scrapped, operating arrangements and rates should be such that they can continue to serve their respective communities with increasing efficiency.

We have not asked to be relieved of so-called "prosecutor" functions of the Commission. We have been criticised with great persistence for performing the functions both of the prosecutor and the judge. This is a purely captious and theoretical criticism. Any one at all familiar with the conduct of our work will realize how impossible it is as a practical matter to have these so-called prosecuting functions influence the members of the Commission in arriving at a judgment in rate questions. The records of the courts will show that not only have railroad officials and employees been indicted, fined and imprisoned as a result of investigations made by us, but shippers have been indicted, fined and imprisoned because of matters brought to the attention of the respective courts by our agents assisting United States attorneys. During certain periods, the number of shippers thus punished has been greater than the number of railroad officials similarly punished, yet I have never heard any one complain that the Commission could not be fair to shippers because it is instrumental in prosecuting shippers for defrauding the railroads. If Congress should deem it wise to take from us these alleged prosecut-

ing functions and place them elsewhere, well and good; but such a transfer of function can have no possible effect on the performance of our official duties especially in rate matters.

One of the most important subjects regarding which we have recently made recommendations, following similar recommendations for many years before, is the regulation of the issuance of securities. A temporary commission, known as the Railroad Securities Commission, made a report upon this subject in 1911. That report proposed a plan of regulation which centered about effective publicity based upon active administrative supervision. I was a member of the Securities Commission and joined in its report and recommendations. Our recommendations to Congress differ from those made by the Securities Commission, and it is pertinent to ask how I can consistently join my associates in the present program. The answer is simple. The conditions of time, place and circumstance, to repeat an expression used earlier in this paper, were different in 1911 from what they are in 1919. One of the main reasons for opposing in 1911 the kind of administrative control of the issuance of securities which we now advocate was the lack of proper information as a basis for action. The field work of inventorying the properties of carriers and of compiling their financial histories and accounts has been practically completed. Although much remains to be done in valuation, what has already been done alone justifies a different legislative program respecting the issuance of securities to-day from what would have been wise ten years ago, I am, therefore, heartily in favor of this feature of our program even though it differs from that which I favored nearly ten years ago.

If there are any who have doubts regarding the necessity for regulating securities I call their attention to a single feature showing that not everything which has been undesirable in connection with securities has been discontinued. About ten years ago a certain important railroad was planning extensive new construction and the acquisition and reconstruction of other properties. These plans have more recently been completed. In that connection the general counsel of the carrier in question addressed its president in a long and carefully framed letter from which I quote only a few sentences:

The amount of consideration to be paid for these lands is in our hands to fix within reasonable limits. \* \* \* Of course, the value of the stock and bonds in this connection means market value, but because our companies will own the stock, at least, if not the bonds, the par

value is very apt to be taken as the actual market value. \* \* \* A full capitalization of the entire legitimate cost of the road is to some extent a protection to our large earnings. \* \* \* Therefore, the capitalization should be fixed at a sum large enough to eat up in interest and dividends, at a reasonable rate of interest and dividends, the probable earnings of the company. \* \* \*

The regulation of the issuance of securities is in itself a large and important task. It has, therefore, been proposed to increase the present membership of the Commission by two. This leads me to make a few observations regarding the size of the Commission. In 1917 the membership was increased from 7 to 9. The same act which increased our numbers also provided for power to act through subdivisions. We organized three subdivisions composed of three members each and designated as Division 1, Division 2 and Division 3, respectively. More recently we organized one additional division known as Division 4, composed of five members, made up of members who also serve on other Divisions. The less important cases are heard and disposed of by Divisions of the Commission, whereas formerly the entire Commission was required to sit in argument and in conference on all cases. Many of the important cases and all applications for and proceedings upon rehearing are still being heard by the full Commission. Only these cases, together with all important questions not directly connected with cases which come before the Commission, are given consideration in conference of the full Commission. This has afforded us substantial relief. While every month there are cases to be heard by the entire Commission, ten for instance, during the present month, there are many days on which only three members of the Commission are required to sit, leaving the other members free for other duties. During the year immediately preceding the creation of subdivisions, we sat in conference and argument for about 220 days. Subdivision has facilitated the conduct of all business which can be disposed of by a Division. On the other hand, the increase in numbers from 7 to 9 has retarded the conduct of some business which requires the consideration of the full Commission. An exchange of views among 9 men and arriving at a decision takes more time than in the case of 7 men. It is now proposed to add two additional members. This further enlargement is necessary because undoubtedly a new subdivision must be created to deal with the question of securities, although fundamental matters will doubtless receive the consideration of the entire enlarged Commission, at least during the formative period.

Suggestions have been made for a commission of from 15 to 25 or 30 members. Such a commission is an impossibility. It could not be a commission in the sense in which a body of five or seven men is a commission. It would be a convention of men. Three men are sufficient to dispose of the less important matters and matters which merely follow previous decisions of a larger body. Five men generally afford all the points of view and deliberative judgment which important questions require. Seven men certainly furnish it; and seven is to my mind the maximum number of commissioners who, acting as a whole, can constitute an efficient administrative and regulatory body. One of the problems of the future relating to our internal organization therefore is the problem of reducing the number of things which the entire Commission of 11 or more members must consider sitting as a body, and increasing the volume of business which may be handled by a subdivision.

I cannot refrain from referring to one element of regulation as it unfolds itself in the future, which is entirely new. Two years of Federal control have initiated into the public service a great body of men who theretofore had been accustomed to take only the point of view of private officials of private companies. With their peculiar experiences and traditions behind them, these men assumed the duties and responsibilities of public officials with the advent of Federal control. They have been compelled to consider not only the private company standpoint but also the public point of view. They have been obliged to act as judges between conflicting public and private interests. They have come to appreciate the position of a disinterested party in controversies affecting such conflicting interests. When these men return to private employment with their respective companies they will be different men from what they were before Federal control. Their recent experiences and observations should make them much more efficient in handling the public aspect of their companies' business and without sacrificing legitimate private interests they will contribute a point of view and lend a support to the work of the Interstate Commerce Commission which would have been impossible otherwise.

Finally I cannot refrain from interjecting a thought which although somewhat foreign to the title of this discussion, is nevertheless most intimately connected with the institution with which we are dealing. I have previously indicated that our

program is bottomed upon the past; that it represents growth; and that in a word it is evolutionary and not revolutionary. Up to very recent times the word revolution has been a part of the vocabulary of American citizens only in describing events of 1776 and what is associated with that date. Unfortunately this word has now obtruded itself upon us, not with the thrilling thoughts and visions of 1776, but we have been compelled to associate it with sinister things that threaten to undo much of what was accomplished in 1776. It is impossible to discuss at this time what these words suggest. As a citizen, however, I wish to be permitted to express the view that while there are many things that should be changed, while there are many wrongs to be righted, any man who in these United States of America to-day talks or thinks revolution is a traitor to our country and an enemy of mankind.

[557]

## THE RELATIONS OF SHIPPER AND CARRIER

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THE problem of railroad regulation and rehabilitation possesses this characteristic—not unusual in problems of an economic character—that from whatever angle one approaches it, one is drawn inevitably into the discussion of its every phase. So closely associated and interdependent are all the interests involved that it is almost impossible to consider one phase without taking into account all the others. The railroad problem from the standpoint of the shipper is in the last analysis, the same problem from the standpoint of the public, and hence what I shall say this morning may appear to wander somewhat widely from the specific topic set for discussion. I take it that the general topic has in mind problems of service and of rates as applied to the mass of commodities transported for the public. It is the problem of freight service. What I propose to do as an opening for the morning's discussion is to state what in my judgment are the outstanding considerations in the relation of the shipping public to the transportation agencies.

In any attempt to solve the present railroad problem, we shall have to take account, among other factors, of two more or less conflicting interests that must be protected and harmonized,—private capital that owns the machine and is assuming responsibility for its operation, and the shippers who are using this machine for the transportation of their freight. What may each require of the other? I am assuming that one of these two interests will be the private railroad corporations rather than the government, because I have been able to discover little evidence of a desire in this country at present for railroad nationalization. Notwithstanding the very evident growth of liberalism and even of radicalism in this country, the activity of socialistic writers and speakers, the intensive campaign of the railroad brotherhoods, there is scarcely a remote possibility that Congress, representing the people, will give a moment's serious consideration at the present time to government ownership and operation. The question of government versus private ownership and operation is

not one of principle, but one of expediency merely. The public should entrust the performance of its transportation service to that agency, whether public or private, that will best perform it. And it is because so large a proportion of the public to-day believes that private capital can give this service more efficiently than can the government, that the agitation for government ownership has made so little headway. I think we may safely proceed in our discussion upon the assumption that private capital is to be given another opportunity to show what it can do to furnish this country with efficient transportation.

Looking at the question, then, first from the standpoint of the shipper, what may he reasonably require of the railroad transportation system,—not of an individual railroad company, for that is not my point of view, but of the aggregate of railroad corporations that stand prepared to handle his freight? What the shipper requires may all be summed up in the one word *service*. Frequently this demand is embodied in the words, efficient service at reasonable rates, but I have intentionally omitted this latter requirement because I question whether by and large the shippers are seriously concerned as to whether the rate structure as a whole is high or low. There was a time earlier in our history when our transportation facilities were not as generous or as flexible as they are now, and when discriminations between large and small shippers were more common. In those days, the shipper felt more directly the burden of the rate, and found it more difficult, if not altogether impossible, to shift it to other shoulders. To-day I venture the generalization that in the large proportion of instances, the burden of the rate is passed on to the consumer, and disappears in price, where it is lost from view forever. What we are more apt to hear to-day, especially from organized bodies of shippers, is the argument for adequate rates. This demand, which has become more articulate during the last few years, is based partly upon a realization by the shippers that this is the only way to get the service they require, and partly upon a consciousness that this adequacy, when obtained, will not seriously deplete their own pocket-books. Where the shippers' interest in rates does appear is in such matters as the equalization of burden upon different commodities, and the equalization of market opportunities for different producing sections and manufacturing centers,—in other words, in the relativity of rates.

If service is the one thing the shipper requires, let us attempt

to analyze it into its most important elements. The first and immediate need, which in a way comprehends all the others, is for a greater unification of the facilities of transportation on the one hand, and on the other hand, a greater unity in the agencies that regulate the operation of these facilities and the charges imposed. Such unification is necessary in order that the rate structure may be simplified and standardized, and the inequalities and the injustices eliminated, that spring from the mass of tariffs filed by hundreds of railroad corporations and passed upon by over two score of regulating commissions. That great progress has been made toward fairer relations, no one can deny who has followed the history of regulation in this country for the past two decades, but the problem is far from having reached the stage of complete solution. The conflict of state and federal jurisdiction in the matter of rates is a serious hindrance to the accomplishment of the desired end. My own feeling is that exclusive jurisdiction in rate matters should be entrusted to the federal commission. We have had sufficient illustration of the ability of the state commissions, when they wish, to throw an interstate schedule completely out of line. Such action on their part may be of immediate advantage to a local industry or two, but for the body of shippers of the country as a whole, such a policy is unfair and burdensome. Leaving the regulation of intra-state rates exclusively to state commissions does not solve the problem for there are few such rates that do not in these days have their interstate implications. Conferences between state and federal commissions may act as a palliative, but such conferences are not likely to take place until the trouble has reached an acute stage. Efficiency in service demands a smooth running machine all the time, and this can only be attained through unified regulation in the hands of a central body.

Equitableness in rates requires again that not only shall regulation be centralized, but that the units of transportation shall be reduced in number, and thrown into larger systems. How many systems there shall be or of what their constituent elements shall consist, I do not here undertake to say, but would merely express the view that they should follow well-established lines of traffic and should be guided in their construction by commercial rather than geographical considerations. A regional grouping would have no economic justification. I do not care to enter here into the legal difficulties associated with the actual processes of con-

solidation, nor to discuss the relative desirability of voluntary and compulsory consolidation, beyond venturing the opinion that voluntary consolidation would not succeed, and that sooner or later compulsion would have to be resorted to if the end were to be attained. Such consolidations along commercial lines would result in eliminating as independent factors the so-called weak roads, by absorbing them into systems with their more prosperous competitors. There would thus be removed much of the economic waste of roundabout hauls, much of the instability in rate structures, much of the inequality in transportation charges as between different commodities and different lengths of haul. The principle of rate-making which declares that in an industry with a large fixed plant any earnings on traffic over and above the out-of-pocket expenses of the haul justify the rate, is sound if properly applied, but it has been carried so far in many instances that it has resulted in enormous waste, and the American public has paid in transportation charges for millions of miles of unnecessary and unjustifiable haulage. The shipping public has a right to demand that so far as it is humanly possible, this wastage should cease, and there is no better time to take the evil vigorously in hand than now, when the whole transportation problem is being studied with an earnestness and a sincerity never before displayed in our history. Consolidation should be effected in such manner as to create large systems covering well-defined traffic routes, and designed to handle the business of the country in the most direct manner, unobstructed by the selfish requirements of any individual railroad system. I do not personally think that competition should be eliminated. There may come a time when such competition will no longer be of importance; but with adequate oversight to prevent misuse of the competitive privilege, I see no reason why we cannot anticipate that competition between these consolidated systems will work to raise steadily the standard of service offered and thus accrue to the advantage of the public at large. The oversight to which I refer would consist in giving to the Federal Commission powers sufficient in addition to what it now possesses over rates and service, to ensure the most complete and most economical utilization possible of road, equipment and terminals without regard to private corporate ownership. Whatever has been accomplished during the period of unified government operation in the direction of joint use of terminals, direct routing, elimination of unneces-

sary switching, and the like should constitute a starting-point for a program of extensive amelioration. The very serious physical problem of joint terminals in the populous centers of the country should be tackled with the aid of the best engineering talent, and the pressure of public opinion should be brought to bear upon municipalities where such terminal problems exist, to seek an early solution. For the problem is in no sense a local one. The situation in St. Louis or Chicago or Kansas City is a vital one for every shipper and every consumer in the country.

Among the added powers that should be conferred upon the Federal Commission is the power to prescribe minimum rates. It is vital to the solution of the entire problem of relativity that a railroad corporation should be prevented from demoralizing the rate structure by a policy of rate reductions, which while temporarily bolstering up its own earnings and benefiting its local shippers, is causing the country at large an economic loss by throwing the burden on other traffic and by depriving routes better located of the opportunity of handling the business. Shippers have come to realize, if the general public has not, that specific rates may be too low as well as too high.

But more than this, in order that the shippers and the public may realize to the full the benefits of an adequate system of transportation, shippers should demand that greater utilization be made of our agencies of transportation other than rail,—particularly the facilities offered by our natural waterways. For the realization of this end, it is necessary that there be constructed such connections between water and rail systems and such facilities of transfer, as will remove existing obstructions. This policy should be urged wherever water carriage is economically justifiable. The public should not allow its waterways to remain idle unless it has satisfied itself by expert investigation that its best interests require an abandonment of water transportation and a concentration upon rail. Certainly it should not sit idly by and lose the use of its waterways merely because the physical connections with rail have not been perfected.

Turning to the other side of the question, what have the railroad corporations in their turn a right to require of the public? This can be stated in a sentence, although it would require far more time than I have at my disposal to discuss the statement in all its implications. Private capital invested in railroads has a right to require a return on its investment in the property devoted

to the public service that shall be sufficient (1) to cover costs of operation efficiently expended, together with taxes and other public obligations; (2) to cover the interest on obligations the proceeds of which have actually been invested in the property; (3) to cover a dividend upon an honest stock capitalization at a rate high enough to ensure that the capital needed for development can be obtained, which means not alone enough to pay the dividend in any one year, but in addition the accumulation of sufficient reserve to satisfy the public that its dividends will be continuous; and (4) to accumulate a surplus sufficient to keep its property up to the standard of service demanded by the public, such surplus to remain uncapitalized.

Of course this statement opens up a wide field of controversy, involving questions as to the validity of the railroads' property accounts, the status of federal valuation and its usefulness when completed, the fundamental question as to what constitutes the value upon which the railroads are entitled to earn, the extent of existing capitalization, and the like. We can only hope that out of the arguments and disagreements of the experts, and the decisions of commissions and courts, some agreement may eventually emerge on fundamental conceptions of value and capitalization and rate of return that will supplant our present haphazard methods of rate determination. I cannot discuss these questions here, but can only say that there seems to me to be no insuperable obstacle to reaching a reasonable degree of approximation as to the value of the property upon which the railroads are entitled to earn, a value that can be adjusted and modified later in the light of more complete data and more thoroughly established principles. We must make a start sometime; most of our difficulties are due to the fact that we have dallied so long.

With the purpose of restoring railroad credit and of insuring to railroads an adequate return upon their investment, two proposals have been made, both of which offer strong claims for enactment into law. To insure an adequate return to capital invested in the industry, it is proposed that Congress should adopt a rule of rate-making as a guide to the Interstate Commerce Commission, the object of which being to make clear that the discretion of the Commission in making rates goes beyond a narrow consideration of the reasonableness of the specific rates under review, and embraces an examination and consideration of the general financial condition of the carrier, to the end that it may

be assured earnings adequate for the service needed by the public. Instead of being confined to the function of guardian of the shipper against the imposition of an unreasonable rate, the Commission is to become the protector and promoter of transportation service as a whole. It would clarify the powers of the Commission, remove all doubt as to the limits of its authority,—a doubt that has revealed itself more than once in divided counsels in the Commission itself—and greatly strengthen public confidence in the determination of the government to assure to railroads adequate earnings.

The other proposal, which aims directly to bolster up railroad credit, is that of a government guarantee of a minimum return upon railroad investment. This suggestion has usually been associated with one for the taking by the government of excess earnings over a certain maximum, to be used for the benefit of the transportation service as a whole. In this form, the proposal has met with determined opposition from railroad executives, first on the economic ground that all incentive to efficiency will thereby be removed, and second on the legal ground that such a commandeering of earnings resulting from rates declared reasonable by the Commission would be confiscatory and unconstitutional. Time does not permit me to enter upon the discussion of this question, which after all is only indirectly related to the topic of this morning. My own conviction is that a government guarantee will be found to be necessary if railroad credit is ever to be restored to a healthy status, and I see no reason why such a guarantee cannot be made sufficiently elastic to prevent the destruction of private initiative.

In conclusion, I would merely add that if adequate earnings are assured to the railroad corporations, the public has a right to expect that the transportation business of the country will be so conducted that the public interest will be the predominant influence in the determination of any question of policy, and will not be held to be merely coequal with that of the private capital employed. We have reached the point in our political and economic development where we are ready to demand that a public service be operated exclusively in the interest of the public, and private capital must be made to appreciate clearly that it is investing in this public business under this restriction. After two years of government operation, private operation is again to be

placed on trial. Nothing short of a whole-hearted acceptance of the principles of public service and their every-day application to railroad administration and operation will save this country from the doubtful experiment of government ownership.

[565]

## OBJECTS OF RAILWAY LEGISLATION

FRANK W. NOXON

Secretary of Railway Business Association

I HAD the privilege on November 17th in St. Louis at the American Mining Congress of hearing an address by the Editor of the *Railway Age*, Mr. Samuel O. Dunn, which contained some very extraordinary and very startling statistics. Mr. Dunn, covering the ten years ended 1915, showed what had been the growth of traffic, what had been the growth of facilities for handling the traffic. He undertook to estimate how far short the provision of facilities had been in comparison with the growth of traffic during those years, what had been the growth of traffic since, what might be reasonably expected to be the growth of traffic in the next three or four years, what it would cost to make up the arrearage of provision accumulated in the ten years ended 1915, and from now on to provide for facilities for new growth. Equating his figures with some view, both to the changed purchasing power of the dollar and also to the increased use of facilities per unit, larger use of cars, tracks, etc., and then, having made his computations in general, making a very generous deduction for possible error, he figured that in the next three years, at least six billions of dollars of new money must be found to make increase in facilities keep pace with the probable growth of traffic. He remarked that we are hearing on all sides a demand that production be increased. He said, "You cannot increase production in the United States, if you do not provide transportation facilities on an enormous scale with which to do that business."

He told the story about a man who had listened to these figures. The man said, "We will do this business by auto truck." Mr. Dunn said, "How will your manufacturers of auto trucks get their materials? How will you build the pikes on which the trucks are to run, if the railroads cannot carry the cement?"

We have had at this meeting two papers, coming from two distinctly different sources. First we had the voice of the economist, coming out of the still air of delightful studies, and, from his detached point of view, giving you his impressions of the

panorama. Dr. Dixon, I think I may say by way of condensation, let you see that somebody—he said the railways—must have “one more chance.” One more chance to do what? I think he left no question in your minds that he meant one more chance to serve the public adequately.

Whether this one more chance is to be one more chance for the regulators or one more chance for the railways, or for both, we may set aside for a moment, and compare that background from which Dr. Dixon speaks and from which his recommendations proceed, with the recommendations in the paper from Interstate Commerce Commissioner Meyer. I wonder if there was any one in the room who at any point in that discussion, admirable and competent as it was, could detect the slightest anxiety concerning whether facilities were to be adequate in the future. You noticed that, in the enumerated list of recommendations made by the Commission, there was something about adequacy of facilities; you heard no statement to the effect that facilities had been inadequate and, least of all, did you hear any acknowledgment that one factor in a restoration of railway development must be the government and its policy.

We have before us first a bill which was passed by the House of Representatives on November 17th and now goes into the hopper for conference. We have, second, a bill introduced on the 23rd of October by the full Senate Committee, which presumably will be in due course passed by the Senate and, in turn, join the House bill also in the hopper of conference. Do those bills have as their background an acknowledgment that provision of facilities in the past few years has been inadequate; that the main purpose now of legislation must be a resumption of railway development through a rehabilitation of railway credit, and that the government has a function in that matter? Are you prepared to approach the consideration of those measures from that point of view and test them by that yardstick? Do they do it or do they not?

The other night in the new Willard Hotel, returning from my day's labor at about 11:30 p. m., I found two friends of mine seated at a table in the dining room engaged in very violent discussion. I said, “What are you talking about?” They said, “We are talking about the railroad question.” I said, “What phase of it?” One of them said, “This man says there are thirty-seven plans, and I say there are only thirty-six.”

I happen to be the servant of an association which gives its entire time to this matter and which hasn't any plan; one, I think, of the very few associations which have no plan. I think even the indefatigable Mr. Waterman in his chart has been unable to detect that the Railway Business Association has a plan.

There is something more important than that, and it is that we have reached the stage now when numbers of associations and individuals who have felt inclined to support one or another of the plans or of the leading provisions in those plans, have come to see that the function now is to drop plans and try to see whether we cannot be sure that Congress in one way or another accomplishes the purpose that underlies some of the plans.

What does this House bill mean to do? A court, in considering what was intended to be done by a legislature, will always give very great weight to a provision introduced but rejected. If a legislative body refused to do a thing which was asked of it, the court will usually hold that the legislature did not mean to do that thing at least.

I ask you to hear two sentences which were contained in the bill as it came from the House Committee:

The Commission shall be charged with the duty and the responsibility of observing and keeping informed as to the transportation needs and the transportation facilities and service of the country and as to the operating revenues necessary to the adequacy and efficiency of such transportation facilities and service. In reaching its conclusions as to justness and reasonableness of any rate, fare, charge, classification, regulation, or practice, the Commission shall take into consideration the interests of the public, the shippers, the reasonable cost of maintenance and operation, including the wages of labor, materials, and taxes, and a fair return upon the value of the property used or held for the service of transportation.

The House cut those two sentences out. I have studied this bill from beginning to end. I can find no other place where the idea involved in those two sentences stands. The House of Representatives goes to conference without having said those things.

Your court also would consider debate; it would consider quotations from reports, in determining whether it was the purpose of the legislature to do a certain thing. Accompanying the report with which this bill was brought in, there was a statement prepared by Interstate Commerce Commissioner McChord, in which he said that there was a decline in railway credit but that the Interstate Commerce Commission was not in any way responsible for this, and the general tenor of that appendix to the Committee report was that, whoever might be to blame, there was no remiss-

ness on the part of the Government in its policy and no need for a change of policy.

In going back still farther, when Interstate Commerce Commissioner Clark, Chairman of the Legislative Committee of the Commission, appeared before the House Committee, he was asked by Chairman Esch whether he would think it advisable to include in the bill which, in its first draft was written by the Commission, that the Commission should take into consideration in the regulation of rates the cost of capital. To which Representative Clark replied he would have no objection to having that go in, because the Commission always had and always would consider the cost of capital, and its course would not be changed in the least if those words went in.

We have in the Senate bill two passages, both occurring on page thirteen of the draft I have in my hand. One is: "No carrier subject to the provisions of this act shall be authorized to receive and retain for the transportation services rendered such proportion of the rates and charges collected by it as may yield in the aggregate more than a reasonable return upon its property investment," a reasonable return, of course, being the return which the court will compel a Commission to permit, a return below which a Commission is forbidden to depress rates. "In changing or modifying rates," etc., "and in viewing them from the standpoint of their effect in producing revenue," etc., "the Commission shall initiate, modify or adjust rates," etc., "as nearly as may be so that the railway carriers as a whole allocated to each district and subject to this act shall earn an aggregate annual net operating income equal as nearly as may be to five and one-half per centum upon the aggregate value as determined," etc.

Here we have a provision which explicitly recognizes that a return must be made upon the securities. It is evident that the purpose here is a restoration of railway credit. Unfortunately, the phrase which I quoted first from this bill seems to negative that and, from other parts of the bill, there are other confusing conflicts as I read it. It may well be that in conference a clarification of these various provisions will result.

But what is behind this Senate Bill? What is in the debate; what is in the report that accompanies the bill? What we have there is the explicit acknowledgment by the full Senate Committee that, to quote as nearly as I can their language, the regulatory

system has failed in the past, because it has not recognized that one of the essential elements, one of the essential aims of government regulation of rates is to attract capital.

Now, I wish to submit to you in the two or three minutes which I hope I still have, a sentence or two which it seems to me Congress ought to embody in substance in any legislation it passes.

To supplement the present federal policy which by the terms of the law is wholly one of restriction, by enacting that rates shall be such as to yield revenue sufficient in the average year to provide necessary expenses and the credit basis so that the average railway may secure adequate improvements and extensions.

Some of those concerned will tell you the Commission will do that anyway. Well, then, what harm is there in saying that they are required to do so in the law? You cannot regulate investors. The investor will buy securities in accordance with his judgment as to whether the rate of return is more attractive to him than from an investment he can get somewhere else. If there is in these bills nowhere that declaration of policy that rates shall be adequate for that purpose, why not say it?

To require that the regulatory authorities from time to time investigate and estimate for a reasonable period in advance the transportation needs of the country and report to Congress or to the public their findings as to such needs and their estimate of the amount of revenue that will in the average year assure approximate accomplishment of such necessary development.

It is said that the Commission considers this, that, and the other. This recommendation is that it shall not only consider past performance, as has been done in connection with the large-scale cases for the last nine years—statistics of the past, in order to determine what shall be the revenue for the future; but, inasmuch as the individual companies must make their budget not for what has passed over the dam, but for the future, just so the Commission shall make a budget of the aggregate needs of the country in advance, and that it shall be in form, that it shall be a tabulation, that it shall be made public, that in a way the Commission signs the pledge that it will carry out these purposes which we say are necessary if the legislation is to succeed.

Carrying that still further in the point of detail, to prescribe that in estimating the net income required in order to attract capital in the amounts found by the regulatory authorities to be necessary, such authorities shall have the power and duty to ascertain and announce from time to time the rate of return which, under changing market money conditions, it is necessary to allow.

In other words, and this is all I have to say, if you put in that bill a rate, whatever the rate, which is prescribed as the rate of

return which is to be permitted, you also say that the Commission is authorized and required to permit not only that minimum rate, but such additional rate as may prove by experience and ascertainment necessary in order actually to attract capital for the improvements and extensions which the business of the country requires.

[571]

## THE SCOPE AND FUNCTIONS OF A FEDERAL TRANSPORTATION BOARD

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SO far as I can recall the suggestion that there should be a Federal Transportation Board originated in a conversation with Mr. Harry A. Wheeler, at that time—and it was less than a year ago—President of the Chamber of Commerce of the United States. I think he said that he had been discussing this question with certain gentlemen in Chicago who had been greatly impressed by the usefulness of the Federal Reserve Board and felt that there should be established in the field of railroad transportation a board similar in character to that which had been so successful in the field of currency and banking.

There had been before Congress and before the country the proposition made by the railway executives that a Secretary of Transportation should be provided for, with a position in the President's cabinet, and that this Secretary of Transportation should have general charge of the executive or administrative regulation of railroads and should, among other things—and that was particularly desired by the railway executives—ascertain the financial needs of the carriers and report those needs to the Interstate Commerce Commission, which, by statute, should be required to establish rates that would meet the needs thus certified to the commission.

That suggestion of the railway executives met with no favor in Congress or with the public, and it had to be abandoned, but at the same time it was very clear that laws for the comprehensive regulation of the railroads in the future must be enacted, and that that regulation would necessarily require for its enforcement the exercise of extended executive functions. The question then came sharply before Congress and before the people, who were thinking about it, whether these new and difficult functions of administrative regulation of the railroads should be entrusted to the already largely over-worked Interstate Commerce Commission or should be entrusted to a new federal agency.

The bill that has passed the House is built upon the idea that it

is wiser to extend the functions of the Interstate Commerce Commission than to create a new board. The bill pending in the Senate, however, starts upon the assumption that it is desirable to provide for the executive regulation of railroads by the establishment of a Transportation Board and the whole bill is built upon that theory.

What ought to be done with this phase of regulating the railroads? I think I should stop just a moment to say that the success of the whole venture of regulation of the railroads must necessarily hinge largely upon the machinery that is provided to give effect to the laws that may be enacted.

When England began regulating railroads about the middle of the last century, dependence was placed upon the courts for the enforcement of the laws. Shippers were expected to resort to the courts to secure their rights under the statutes. Regulation made no headway in England, nor did it in this or other countries, until machinery for the enforcement of the regulatory laws was provided. The Interstate Commerce Commission was effective in this country for the purpose for which it was created, and anything that I may have to say in support of a Federal Transportation Board is said with no idea of criticizing the Interstate Commerce Commission.

Whether there should be a new board or not was considered in a statement which Mr. Wheeler made when he presented to the House Committee on Interstate and Foreign Commerce a program of legislation that had been adopted by the National Transportation Conference. Mr. Wheeler said, "It is believed that the Interstate Commerce Commission ought not to be burdened by the addition to the tasks it now performs of a large number of administrative duties. Should the commission as contemplated become the authority for the sole regulation of all railroad rates, rules and regulations affecting interstate commerce, its duties will necessarily be enlarged. To require the commission to exercise the administrative functions contemplated in the proposed plan of remedial railroad legislation, would be to the detriment of the public interest because it would seriously interfere with the prompt action of the commission as a body for the regulation of rates, the task for which it was especially created and for the performance of which it is peculiarly adapted."

It will be interesting to review just by title the additions to

the duties of the Interstate Commerce Commission which the bill passed by the House of Representatives proposes to make. The commission, of course, is to continue to regulate rates, not only as it has in the past, but in a larger way, because it is to determine rates on traffic within the states, for the most part, as well as rates on interstate traffic.

The new duties which it is proposed to give to the commission, as enumerated in the House Bill and as summarized by Mr. Richard Waterman in a comparative statement he has prepared for the Railroad Committee of the Chamber of Commerce, are as follows:

(1) To keep itself informed as to the transportation needs, facilities and services of the carriers.

(2) To authorize the unification, consolidation or merger of two or more carriers whenever the commission finds such consolidations to be in the public interest, and to authorize the pooling of traffic, earnings and facilities.

(3) To exercise jurisdiction over the use, control and supply, as well as the movement, distribution and interchange of locomotives and cars, and also the supply, movement and operation of trains.

(4) To prohibit the extension of present lines, or the construction or acquisition of new lines by any carrier until it has obtained from the commission a certificate of public necessity and convenience.

(5) To require the construction of docks and rail connections between rail and water carriers.

(6) To provide, when necessary, for the redistribution of traffic and for the joint use of terminals.

(7) To exercise exclusive jurisdiction over the issuance of securities by carriers.

(8) To order a carrier to install automatic train stops or train-control devices.

(9) To exercise other important regulatory powers belonging to the Federal Government.

I submit, without argument, that that is a rather large layout of additional duties. The service of about two years which I had the privilege of performing on one of the State commissions, and the knowledge which I gained there of the difficulty which a State commission has in keeping abreast with its work, convince me that a body of nine—or as it is proposed, eleven commission-

ers, constituting the Interstate Commerce Commission—could not successfully perform in addition to the duties of rate regulation this long list of executive tasks.

Now if a Transportation Board be created, what specific functions shall be given it? I will enumerate them briefly without much elaboration.

First, the Board should determine and announce the grouping or consolidation of railroads to be in the public interest. We are going to have in the near future, I hope—in the distant future certainly—a greatly reduced number of railroad systems. Consolidation is to come about. The House Bill provides for it by voluntary action of the carriers. The Senate Bill provides for it by voluntary action for a period of seven years and thereafter, if necessary, by the exercise of compulsion on the part of the Federal Government. That grouping and consolidation of railroads with the incidental tasks it imposes will involve a large amount of work on the part of any regulatory body.

Second, the Board should have the authority to require, if compulsion is found to be necessary, the railroad companies, as a precedent to the formation of railroad consolidations, to become Federal corporations either by organization of new companies under Federal charters or by changing from State to Federal corporations. A problem of compulsory incorporation of railroads with the shifting from State to Federal corporations is here in question.

Third, the Transportation Board should be given authority to pass upon the public necessity for the expenditures of capital, in excess of a minimum amount stipulated by statute, by all carriers engaged in interstate commerce. This power should be so exercised as to prevent unnecessary duplication of line or terminal railroad facilities and as gradually to bring about the unification of railroad terminals and to accomplish that degree of coördination of the rail, highway and water transportation facilities that may be found to be in the public interest. The unification of our railroad transportation system in the future can be brought about, to a large extent administratively by the authority that controls expenditures.

Fourth, the Board should administer whatever general railroad contingent fund the statute may authorize or require the carriers to accumulate. The Senate Bill, which was influenced largely by the program of legislation worked out by the National

Transportation Conference, provides for a company reserve fund to be built up by each railroad company and for a general contingent fund to be managed by the Transportation Board for the purpose of developing railroad and other transportation facilities.

Fifth, the Transportation Board should act as a referee in cases of disagreement resulting in a deadlock of any of the boards which it is proposed shall be entrusted with the adjustment of wages, hours of employment and other conditions of railroad labor. The scheme of adjustment of wages and working conditions by dual boards has been explained by Mr. Doak.<sup>1</sup> It is now in operation. When there is no longer a Director General of Railroads, some authority must be selected to settle deadlocks that may arise in any board.

Sixth, the program of legislation which the National Transportation Conference worked out, and which meets with my approval, and with the approval of every man I have talked with about it—provides that the Board of Directors of these federalized railroad corporations which are contemplated shall contain at least two representatives of the employees and two of the public. That is to carry out specifically the idea of trusteeship which the chairman emphasized in his opening remarks. I believe it will be very helpful to the railroads and of benefit to the public.

Seventh, the Transportation Board should be authorized and required to inquire into the practices of railroad management and to propose measures for preventing abuses therein. We have had within recent years a good many unfortunate examples of irresponsible management of railroads and we are not so far from that past history as to be certain that when we return to private ownership unjustifiable exploitation may not again be possible. I believe that abuses should be prevented by the searchlight of investigation and information.

Eighth, the general duty of a transportation board should be not only to bring about the healthy development of railroads, but the coordination of railroads with waterways and with highways in order that this country may have in the not distant future a well-rounded, coordinated national transportation system.

One other power has been recommended for this board and urged in certain quarters with a good deal of force, and that is

<sup>1</sup> See pp 178

that the new board should be responsible for the finances of the railroads in that it should determine what the financial needs of the carriers are and certify those needs to the Interstate Commerce Commission.

My own view of that matter has always been, from the time it was first brought to my consideration, that it would be unwise to take away from the Interstate Commerce Commission any of its responsibility for the maintenance of revenues adequate for the carriers. The Commission is the authority that passes upon the rates. It should feel the responsibility of determining what the revenue needs of the carriers are and of providing the rates therefor. If some other authority, outside of the Commission, is responsible for determining the revenue needs of the carriers, the Commission will perhaps not act with that degree of responsibility that it ought to feel; and then also, it is quite possible that this division of authority and responsibility between the two boards might develop undesirable friction between the two authorities.

Lastly, what kind of a board should this be? Not a large board—five members are better than more because its purposes are to be executive. One objection—and it is a strong objection—to investing executive functions with the Interstate Commerce Commission, is that it is too large a body for effective administrative or executive work. While I would not take away from the commission the limited executive functions it now exercises—because most of them are related to rate-making and those that are not related to rate-making are not difficult to administer—I do not think it would be wise to vest executive functions in a body of nine or eleven men. Boards at best are apt to be long, narrow and wooden, and while the Interstate Commerce Commission is by no means wooden, nor has it been narrow, it is long, and its processes would be slow.

What is needed is quick, intelligent, effective executive action on the part of a board with a maximum responsibility for the development of a national transportation system.

## THE HOUSE AND SENATE RAILROAD BILLS

RICHARD WATERMAN,

Secretary Railroad Committee Chamber of Commerce of the United States

**W**HEN Dr. Lindsay asked me to present at this meeting a summary of the railroad legislation that is now before Congress and to compare the two bills, I asked for leave to print. That is what they usually do in Washington. So I have prepared a printed chart showing in parallel columns the important provisions of the Senate and House bills and have asked your chairman to hand a copy to each member of the Academy who attends this meeting.\*

Before discussing the pending bills I am going to refer briefly to some of the steps that have been taken by the House and Senate Committees in preparing them. Each of these committees has held public hearings lasting for many months. At these hearings thirty or forty different plans for railroad legislation have been laid before the committees and later printed in full in the reports of the hearings. Examination of this testimony shows that almost every witness who came before the committees emphasized in one way or another four essential features of the railroad problem which may be stated as follows:

1. If the country is to grow, the railroads must grow.
2. Growing railroads require a constant stream of new capital.
3. This capital can only be attracted on the basis of good earnings.
4. Good earnings, of course, mean adequate rates.

When the time came to introduce legislative measures for the consideration of Congress, seven bills were drafted, of which two were read into the committee record, and five were actually introduced and referred to the Interstate Commerce Committees. These two committees, after considering all of the plans and all of the bills, reported out two separate bills that differ in many important particulars. In my chart I have compared the bills point by point. Dr. Lindsay asked me to read the comparison into the record, but as you have it in hand, I am simply going to read a brief summary of the comparison.

\* Reproductions of Mr. Waterman's Charts appear on pp. 75a-75b and 105a-105b.—Ed.

The Esch bill, H. R. 10453, was passed by the House of Representatives November 17, and at once sent to the Senate. The Cummins bill, S. 3288, was reported to the Senate October 22 by the Committee on Interstate Commerce and will probably be taken up for consideration at the opening of the regular session of Congress December 1. An examination of the chart shows that while the two bills have many points in common, there are certain very important respects in which they differ.

#### *Ownership and Operation*

Both bills provide for the return of all railroads and transportation systems to corporate ownership and operation on the last day of the month in which the act is approved.

#### *Consolidation and Competition*

The Senate bill provides for the consolidation of all railroad properties in accordance with a plan to be promulgated by the proposed Transportation Board and approved by the Interstate Commerce Commission, into twenty to thirty-five separate competing systems, each owned and operated by a distinct federal corporation—consolidation to be voluntary if accomplished within seven years, and thereafter to be compulsory.

The House bill provides for the consolidation of any two or more carriers and for the pooling of their traffic, earnings and facilities to whatever extent the Interstate Commerce Commission indicates will be in the public interest.

#### *Federal Incorporation*

The Senate bill provides that all railroads shall be required to organize under a federal charter; while the House bill opposes federal incorporation.

#### *Capital Expenditures and Security Issues*

Both bills provide for exclusive federal regulation and control of railroad security issues and capital expenditures—the Senate entrusting this regulation to the Transportation Board, and the House to the Interstate Commerce Commission.

#### *Adequate Revenues and Credit*

Both bills recognize the necessity for providing the railroads with revenues that will be adequate for their needs and will result in restoring their credit.

Both bills provide for a continuation of the rates that are in effect at the termination of federal control, until they are changed by competent authority.

The Senate bill requires the commission to divide the country into rate-making districts; but the House opposes this step, believing that rate making based on average conditions of carriers within a given region would be an impossible task.

The Senate bill proposes a new rule of rate making that makes it mandatory on the commission to fix rates that shall be not only just and reasonable, but also adequate; but the House bill leaves the commission free to define its own rule of rate making.

Both bills provide for a continuation of the present plan for the valuation of all railroad properties by the commission.

The Senate bill provides for the creation of two kinds of reserve funds, viz., a company reserve fund drawn by each road from its own excess earnings to support its own credit; and a general contingent fund drawn by all prosperous roads from their excess earnings to support the credit of the railroads of the country as a whole.

The House bill provides for the creation by the Government of a \$250,000,000 revolving fund from which carriers may obtain, during the first two years of resumed private operation, loans bearing 6% interest and maturing in five years.

Both bills provide for equalizing the revenues of the poor and the rich roads by means of consolidation effected under governmental authority.

Both bills provide that for six months after federal control ends the Government shall guarantee to all railroads an operating income equal to the standard return for the same period paid during federal control.

Both bills provide for funding the debt of the carriers to the Government, although under very different conditions.

### *Wages and Working Conditions*

Both bills provide for the continuation of the general plan for the adjustment of labor disputes that has been in effect during the period of federal control.

The Senate bill provides for the creation of three Regional Boards of Adjustment to hear and determine disputes other than controversies relating to wages and working conditions; and the creation of a Committee of Wages and Working Conditions to

have jurisdiction over all controversies respecting the wages and the working conditions of railroad employees. In addition the Senate bill declares that railroad strikes and lockouts are unlawful.

The House bill provides for the creation of three Boards of Adjustment to hear and decide disputes between the railroads and certain classes of their employees, and three Appeal Commissions to consider appeals sent to them by the three Adjustment Boards.

### *Federal Agencies of Regulation*

Both bills provide for the exercise of many new regulatory functions by the Federal Government—the Senate bill creating a new agency to exercise the new functions, and the House bill entrusting all of the new functions, as well as the old, to the Interstate Commerce Commission.

The Senate bill provides for the maintenance of the Interstate Commerce Commission with its rate making, valuation and accounting functions; and also for the creation of a Transportation Board to plan and supervise railroad consolidations, to regulate security issues and capital expenditures, to serve as a final board of appeal in labor controversies, to exercise certain executive and administrative functions now exercised by the Interstate Commerce Commission, and to perform many other important federal regulatory functions.

The House bill establishes no new agency for railroad legislation but provides for the maintenance of the Interstate Commerce Commission with two additional members and with authority to exercise all of its present functions and many new ones.

## WHY RAILROAD REGULATION HAS FAILED

H. T. NEWCOMB

Lawyer, New York

**T**HE situation of the railways of the United States at the present moment, as developed in these discussions during the last few days, is very easily summarized, and in very few words.

On two days' notice, at the end of 1917, the owners of the properties were expropriated in the face of a great national emergency which, under the conditions then existing, undoubtedly made that expropriation necessary. For the two years that have ensued they have been managed by public officers and with this result, that the Government of the United States has sustained a heavy loss each year through the insufficiency of the revenues to make up the expenses which the Government incurred; a thousand millions of dollars have been added to the wages-expense of the railroads; wages have been raised as though there were a bottomless pocket from which to draw the funds necessary to meet them. The properties have been—owing to exigencies that probably could not have been avoided—undermaintained, and are no longer in the excellent condition in which they were when taken over. All expenses of operation have gone up, not only through wages, but through the greater cost of all the materials and supplies necessary for operation.

Now that the railways are to be handed back to the owners and, under these conditions, they ask a guarantee for the short period of six months in order that they may have time to adjust themselves to the new conditions and to develop and restore the efficiency which they had before their organizations were destroyed, before the properties were taken out of the hands of their proper officers, those selected by the security owners. This guarantee is more necessary in the interest of general industrial stability and public welfare, than in that of any railway or any group of investors in railway securities.

It seems to be admitted, without qualification, that most of the regulation which we had up to the end of 1917, when this happened, was not wholly successful. My friend, Professor Johnson, suggests that we should have a transportation board. I take it

that this board is to regulate the Interstate Commerce Commission. I wonder who would regulate the transportation board and how soon regulation of the transportation board would become necessary? "Big fleas have little fleas to bite 'em and so on ad infinitum."

We commenced this form of regulation in 1887 with a very modest attempt; a law depending principally on publicity, declaring the principles of the common law that there shall be no unjust discrimination and no excessive rates; forbidding pooling, that is attempting to enforce competition, and enacting, as perhaps its most rigorous provision, the "long and short-haul" clause, but partly subject to dispensing power on the part of the Commission and not enforceable at all except under substantially dissimilar circumstances and conditions.

Of course that statute, as everybody knows, was a compromise. No one really wanted an Interstate Commerce Commission at that time. The advocates of drastic regulation proposed a measure which would contain hard and fast rules that would have to be obeyed, and the Commission was inserted as a compromise between those who wanted very drastic regulation and those who did not want any regulation at all. That act was amended in 1889; in 1891; in 1893, when we obtained the act which permitted the United States to compel testimony from persons who claimed that their testimony might be self-incriminatory.

In 1903 we had the Elkins Law and the Expedition Act; in 1906 the Hepburn Law which, for the first time, conferred real rate-making power upon Federal officers, and in 1910 we obtained the regulation which finally made operation of the railroads during an emergency impossible—the statute giving the Interstate Commerce Commission power to suspend changes in rates, thus making it impossible promptly to adjust rates to changed conditions.

That act, of course, had its natural result. The fall in the value of money which had commenced in 1896 and gone forward very rapidly up to 1914, the beginning of the war, became very rapid in 1914, and much more rapid after 1915, and rate schedules to which the railroads were tied partly by statute and partly by custom, became totally inadequate under the situation thus developed. The money which they received was measured in depreciated currency and was insufficient, and the act of 1910 made it impossible for them to correct that situation.

Consider this contrast. Our fathers went through the Civil War, a war which for four years made drains upon the man and money power of this Nation infinitely greater than anything that happened to us during the twenty months of our participation in the European war, months that succeeded our period of wonderful prosperity while not engaged in the great war. Yet during the Civil War no railroad not in the immediate track of hostilities had to be or was taken over by the Government. There was then infinitely greater need for railways for the prompt movement of troops. There was infinitely greater need of going to the money market and getting the last cent that market could supply, but it was not necessary to take over the railroads. Has any one any doubt why it was necessary in 1917 to take them over? Because, although the power of the President of the United States could take these properties into the hands of the Government, the power of the President of the United States could not direct the Interstate Commerce Commissioners to grant a speedy and rapid increase in rates and thus to permit precisely the sort of adjustment that was made all through the Civil War.

During the Civil War period the railroads adjusted their rates, almost daily, to the depreciated value of the currency in which they were paid. During the war through which we have just passed, no such power existed and in order that the Government of the United States might have ready recourse to the money markets, in order that failures of railroads to pay interest on their bonds should not create a situation which would make it impossible for the United States to borrow—it would greatly increase the difficulty of financing the war—it was necessary to take them over. They weren't taken over for any other reason at all. There was no question of inefficiency. At the end of 1917 the railroads were carrying more freight and carrying it better and performing all the services for which they existed with higher efficiency than at any other time in the history of those properties. There was no reason for the expropriation of their owners except the financial reason.

Now the question is, whether we are to go back, at this period, to the same form of regulation which we have had, which produced those particular results and which, if we go back to it, will leave the railroads forever in the condition of being unable to respond to any great national emergency, **not through** any lack of efficiency on the part of the men who operate the railroads and

have direct responsibility for their operation but because the Government of the United States has tied those men hand and foot and they are unable to make the price adjustments which every other business industry—except the regulated industries in this country—is able to make.

For thirty years I have lived in the midst of this regulation, a close and a constant witness of the misadventures of the legislative attempts which I have very briefly attempted to review. Every failure and every inadequacy of that legislation has been an argument for more legislation along the same line. No failure, no inadequacy, has ever been advanced as an argument for abandoning the plan, or for changing or modifying the plan, but every failure has been an excuse for more action, and more drastic action, along the same precise line. Thus every false step has led to another equally false and, continuously, we have gone further in a wrong direction. Therefore, without forgetting any aphorism that you may think applicable, I wish now to ask whether mistakes must forever be reasons for more mistakes?

## AN ENGINEER'S POINT OF VIEW

HILLHOUSE BUEL

Industrial Engineer

THE subject of railroads is possibly as interesting as any subject that we have to deal with, because it is one of the three major divisions of our activities, namely, production, distribution and consumption. It, therefore, enters into all the factors of our lives.

### *Government Operation*

I have been interested in following the different bills that have been presented in Congress, and the different comments that have been made upon them. The remarks in regard to the Plumb Plan bring out the question of government ownership or control.

I would like to say just briefly that government ownership, operation or control, while it might operate satisfactorily in an autocracy, if your autocrat were wise, will not work out satisfactorily in a democracy such as we have to-day. Although we may change our democracy in the future, under our present form of democracy, we would find that government ownership would impose upon us a paternalism which would destroy incentive, paralyze initiative, and retard progress.

In the second place, the officers would be appointed, not for their experience and ability, but on account of their influence and usefulness to the prevailing party. This could only lead to inefficiency. It is not the way we solve economic problems.

### *Faulty Organization*

Recently we have had an illustration of improper organization at Washington in the National Industrial Conference. To start with, the conference was improperly composed. The men were not selected on account of their special fitness to solve economic problems. Secondly, the conference was improperly organized and its methods of procedure were opposed to economic law. It was organized into two or three conflicting groups that were to oppose each other and to arrive at their conclusions by arbitrary determinations, compromise, barter or the numerical ponderance of a mere vote.

### *Solving Economic Problems*

Now, economic problems are not solved by guess work, and they are not solved by a mere vote. If you want to know how many peas there are in a pod, you do not call a conference and take a vote on it. Economic problems should be solved by accurate and thorough observation as a basis for exact and scientific determinations. When you constitute these different bodies that are to solve your economic problems with properly chosen engineers—transportation engineers, industrial engineers, and production engineers, managers who have had successful experience in the operation of their different activities, and your various operatives that cover the successful operations in your different departments—when you have brought together a body or staff of such material, you will have a fair chance first, to see that the situation is properly observed as a prerequisite for your future determinations, and second, that you have the men qualified to make the careful, exact determinations necessary for sane, workable, economic operations of the transportation units.

### *A Comparison*

To the gentlemen who stated that "we are the only country in the world that does not own its own roads," I wish to answer first, that his statement is a bit broad, and second, that a comparison of the growth and development of our railroads and our country with the other countries of the world would seem to commend our system over all others. I sincerely trust we will have the good sense not to destroy or impair that incentive which, in a brief one hundred years, has made us in production and progress the giant and premier country of the world."

Much has been said in support of consolidating and regrouping the railroads under a board, something of zoning by public officials, and much more about the expenditure of capital, the equalization of revenues with the contingent fund and refinancing. To these issues I want to reply briefly.

### *Wise and Unwise Consolidations*

It has been my experience that consolidations are commonly effected, wittingly or unwittingly, with total disregard of what functions can or cannot be consolidated with good results. The provisions advocated and those embodied in bills now pending or heretofore submitted to Congress if enacted or made effective would ultimately disorganize and greatly impair the entire trans-

# Proposed Plans for A Summary

*Secretary, Railroad Committee Chamber of Commerce*

**T**HE Chamber of Commerce of the United States has prepared the accompanying chart to show in convenient form for comparison by busy men seven proposed plans for railroad legislation. In all probability one of these plans will be enacted into law before the

President returns the railroads to their owners on January first.

The Transportation Conference plan is proposed by the National Transportation Conference which was held under the auspices of the Chamber of Commerce of the United States.

	Senate Committee Plan	Commerce Commission Plan.	Railway Executives Plan
	The Cummins Bill S-2906 presents the recommendations of the sub-committee of the Senate Committee on Interstate Commerce. It provides for:—	The Esch-Pomerene Bill H. R. 4378 presents the plan proposed by the Interstate Commerce Commission. It provides for:—	The tentative draft of a bill laid before the House Committee by T. D. Cuyler, President of the Association of Railway Executives, provides for:—
<b>Ownership and Operation</b>	Ownership and operation of all the railroads in the United States by 20 to 35 separate competing systems.	Ownership and operation of all railroads by private corporations under broad federal supervision.	Ownership and operation of railroads by private corporations under a broad national commission and a unified system of government regulation.
<b>Consolidation and Competition</b>	Consolidation of all railroad properties into 20 to 35 systems in accordance with a plan previously adopted by the Railway Transportation Board and approved by the Interstate Commerce Commission—consolidation to be voluntary if accomplished within seven years, and if not, compulsory.	Consolidation of existing railroad systems when approved by the Interstate Commerce Commission.	Consolidation of existing railroads into strong competitive systems wherever found to be in the public interest; and also provision for joint use of equipment and terminals when in the public interest.
<b>Federal Incorporation</b>	Federal incorporation of all railroads with a requirement that each corporation shall include in its Board of Directors two representatives of classified employees and two representatives of the government.	Opposition to federal incorporation as a complicated, protracted and probably unconstitutional method.	Provision for permissive federal incorporation of all interstate carriers.
<b>Security Issues and Capital Expenditures</b>	Exclusive regulation and control by the Interstate Commerce Commission of the issuance of railway stocks and bonds and of the purposes to which the proceeds thereof may be applied.	Full control by the Interstate Commerce Commission over stock and bond issues and over the expenditure of the proceeds.	Exclusive national control of the issue of securities and the expenditure of new capital—control to be exercised by the Federal Transportation Board.
<b>Adequate Revenues</b>	Initiation of rates by carriers subject to the approval of the Interstate Commerce Commission. Requirement that the Interstate Commerce Commission shall divide the country into rate districts and the carriers into rate groups for rate making purposes. Regulation of all rates that affect interstate commerce by the Interstate Commerce Commission under a statutory rule providing that in making rates for the several rate groups the Commission shall take into consideration the interest of the public, the shippers, the wages of labor, the cost of maintenance and operation, including taxes and a fair return on the value of the property.	Regulation of rates by the Interstate Commerce Commission under the provisions of the Act to Regulate Commerce with amendments shortening the period of suspension of rates, authorizing the Commission to determine the division of rates between carriers, to consider the cost of service principle in fixing rates, and to exercise other broad powers affecting the general rate structure.	Initiation of rates by the carriers. Exclusive regulation of rates by the Interstate Commerce Commission with the aid of Regional Sub-commissions under a statutory rule prescribing that level of rates shall provide revenue sufficient to pay wages and other expenses of operation and a fair return on the value of property used in the public service and to establish and maintain a credit sufficient to attract the new capital necessary to meet the public need for transportation facilities. Certification by the Federal Transportation Board to the Interstate Commerce Commission of the amount of operating revenues needed by the carriers to enable them to perform their functions.
<b>Wages and Working Conditions</b>	Creation of a committee of wages and working conditions (four employees and four representatives of the companies) to settle disputes; with appeal to the Transportation Board in case of deadlock. Declaration that decisions of the Board, i. e., of the Government, shall be final, and that railroad strikes and lockouts are forbidden.	(No declaration.)	(No declaration.)
<b>Federal Agencies of Regulation</b>	Continuance of the Interstate Commerce Commission with enlarged powers to regulate rates and security issues. Creation of a Railway Transportation Board with five members appointed by the President to perform many important executive and administrative functions, including some now performed by the Interstate Commerce Commission.	Maintenance of the Interstate Commerce Commission with all of its present powers and in addition authority; to regulate carriers by water; to control consolidations, joint use of facilities and the pooling of freight earnings; to authorize additions, extensions, and the construction of new lines; to adjust conflicts between federal and state jurisdictions; and to control security issues and capital expenditures.	Maintenance of the Interstate Commerce Commission with authority to regulate rates and continue its present valuation and accounting functions. Creation of a Federal Transportation Board composed of three Commissioners appointed by the President and charged with the general oversight from the point of view of the public interest of all transportation. This board would be co-ordinating with the Interstate Commerce Commission and would relieve of all functions except rate regulation, valuation and accounting.



portation system, would greatly retard and impede industry and commerce and only result in heavy loss to the whole country.

Our experience during the war with uneconomic overconsolidations and over-centralizations attempted without a proper knowledge of the fundamental principles of economic organization and distribution of functions, should cause us to pause before we plunge headlong into other top-heavy consolidations, which are not, as a prerequisite, squarely founded on scientific economic determinations of all factors involved. We have seen war organizations that worked well in large cities break down with costly results when applied by the same officials to the country as a whole, because they did not understand the fundamental principles of organization and economic adjustment of functions. Consolidations should be limited to normal extensions and combinations which have an economic value, preserving all proper economic competitive factors. A contrary course would prove most costly and unwise.

#### *Economic Co-ordination*

It is, however, vitally essential that the transportation units of the country be properly *co-ordinated*. By this is meant *not* the consolidation of all the roads, but the relating of the several units so that they will function to the common advantage while preserving their individual identity and several operation. So related, they would avoid destructive competition while stimulating a wholesome competitive rivalry, encouraging genius and effective economics, and furthering development and progress. Properly adapted and applied this would result in direct benefit and profit to the roads, to the employees and to the entire industrial and commercial interests of the country. This can be done.

#### *Rates*

The statement that "the correct solution of rates is to have them made by public officials" is unsound and ill advised. Shoes should be made by shoemakers and rail rates by rail rate-makers experienced in railroading. Nor should they be arrived at by compromise, barter or the mere ponderance of a vote. The Governmental administrative body, with examiner and public service functions, should have one or two experienced rail rate men in its body and should see that the making and administration of rates conform with the law. The statutes should be expressed in terms of principles, limitations and self-

determinate ratios and worded so as to preadvise the roads what their obligations and duties are. The provisions for the public service functions of the administrative body should grant authority to meet situations, emergencies and needs which the statutes fail to cover.

### *Distribution of Revenues*

Much has been said in approval of the contingent fund plan and the equalization of revenues as expressed in Section 6 of Senate Bill 3288. I am obliged to take issue with the proponents of these provisions. Of all the pending legislation, if enacted and enforced, this section, which proposes to distribute certain earnings of profitable roads to the unprofitable roads, would in time only wreck the transportation system of the country and cripple industry and commerce. Roads now efficient would become inefficient and inefficient roads only less efficient. The section as it now stands fatally violates all economic law. It, in fact, provides a system of *forcing accounts* to meet deficits—but another sample of *super-accounting* for self and public deception. It is economic error to penalize efficiency or to put a premium on inefficiency. Experience teaches that what does not conform to economic law cannot endure. This is axiomatic.

### *Economic Solutions*

There is a solution to this problem and this section of the Senate bill can be amended to conform to the law.

*First.* It should provide for a standard wage scale, cost of operation, rates and dividends in limitation of ratios and percents as a result of an exhaustive engineering survey.

*Second.* It should provide a margin in rates to meet fluctuations, the balance resulting going to the Government as a tax and thus finally returning to the consumer.

*Third.* It should provide that any savings or increased balances resulting from any efficiencies or economies that shall be effected shall be distributed one-third to the shareholders in the form of increase to dividends; one-third to the employees and management, effecting the saving and one-third to the Government on earned sums until such time as it can be applied in a permanent reduction of rates. By thus preserving proper incentive for greater effort and efficiency, substantial economies will be encouraged and inventive genius stimulated. This is good business.

### *Plans to Refinance*

It has been stated here by a gentleman who stands high in financial circles that "the \$6,000,000,000 needed to refinance the railroads of the country cannot be raised by any conceivable plan." In taking issue with the speaker, I wish to state that I might refer him to half a dozen or more gentlemen who can provide a suitable plan for this accomplishment and that my own work on this problem some months ago crystallized in the concrete form of an outline and chart, which I am able to state is well adapted effectively to finance the railroads on a safe and sound basis and impart a high standard of security to their paper.

### *Arbitration*

The provision in pending legislation looking to make arbitration compulsory is both amusing and unwise. Unwise because it will not work. Amusing because it is just the opposite from what it should be. The act should specifically provide that no rates, no wage scales, no time schedules and no operating factors shall be or become a subject for arbitration or bargaining. That these elements shall be fixed only as the result of exact, scientific determinations of accurate and thorough surveys made by a competent staff of engineers constituted for that purpose. It is time we removed the solution of these problems from the realm of guess work, bargaining, barter and compromise. When we do so, all individuals and groups concerned will profit most greatly.

### *Present Needs*

What the railroads need is not copious legislation and multiplicity of boards, but rather the enactment of a few simple measures and some good straight work by those who will untie their knots and map out the working details of plans that will carry into effective operation the proper relating of their several activities.

### *Conclusions*

In conclusion I wish to urge that the pending bills and legislation be amended before enactment in line with these suggestions,—and that steps be taken by those in a position to act, to form and provide for a staff of engineers and experienced railroad men who shall take up the solution of these problems and work out detailed plans to carry solutions into effective operation.

## THE REGULATION OF WATER CARRIERS

R. A. HISCANO

General Manager, Catskill Evening Line, New York

**I**N the past three years there has been considerable attention directed to our waterways, and this is due to the growing realization of the need for additional transportation facilities. Recent experience has plainly indicated that the railroads of the country can not entirely take care of the country's traffic, and for many reasons extension of the railroad systems is not possible, particularly in the more densely settled sections of the United States. We then come to the question of what can the water lines do to furnish the additional means of satisfactorily handling the country's tonnage.

In order to form some basis for the plan of the more intensive use of the rivers, lakes and canals of the United States it is necessary to consider the position the water lines occupied sixty years or more ago. At that period the bulk of the tonnage was shipped by water and the rail lines were not the mainstay of the shipping or traveling public. As you all know, gradually the railroads extended and as they grew the water lines declined. Now many reasons have been advanced which explain why the waterways each year continued to be less and less used, but I think the first and most important cause was the smaller scale on which a navigation company was operated. It was usually an individual organization dominated by one man whose financial means were necessarily limited. In fact, this condition still exists today to a great extent. Now a one man company could not always keep abreast of times and so, when the equipment wore out, no attempt was made to renew it or to continue the service.

Gradually as the water lines in a section retired, others were discouraged from attempting to enter the field. The second reason was the unceasing warfare waged by the railroads, who, with their extensive organizations, were able by cut-throat rates, competing service, rebates, etc., to force those lines out which could otherwise have continued in business.

This is of course, all a matter of history now, and by reason of national laws and public opinion, the existing water lines now have a better opportunity to conduct their business. The prob-

lem of to-day is to restore to our rivers and canals the service which is required and those who have studied the question, think that some of the following ideas should be adopted:

First, discourage Congress from enacting any additional legislation which will have a tendency to drive the water lines from business. For example, the Esch Bill recently introduced in the House of Representatives originally contained a provision to place the water lines completely under the jurisdiction of the Interstate Commerce Commission. Only the strongest kind of protests filed by shippers, commercial organizations, and navigation companies were successful at the last minute in having this feature eliminated from the bill. Another point, the existing Interstate Commerce Act has been construed by the Interstate Commerce Commission to give the commission authority to prescribe the form of bill of lading issued by navigation companies, although such jurisdiction and order would annul the provision of the Harter Act and other legislation expressly enacted to protect the water lines because of the greater hazard they encounter in the conduct of their business. If the United States Supreme Court upholds the commission, then Congress should amend the law so as to deprive the Commission of such authority in this particular.

Secondly. Congress should on the other hand pass such legislation as will compel a railroad company to extend to a connecting water carrier the same division of through rates, or terminal facilities, or share of unrouted traffic as is given to a connecting railway line, all conditions being equal. However, the originating rail carrier should not be compelled to take a lower division than the rail competitor of the water line would allow it, or that the originating rail carrier should give a greater share of unrouted traffic than the boat line turned over to it. To illustrate the reason for this proposed law, I wish to point out that the port to port local traffic of a water line is not usually sufficient to make operation of the line profitable, and a certain amount of through or joint rail and water freight is needed. Now the present practice is for the powerful railroads to allow the smallest division of joint rates they can be forced to give, with the result the navigation companies can not earn sufficient to pay even the handling charges on the through freight, and they therefore do not encourage the business. On the other hand where two connecting rail lines join in through rates the divisions are ar-

ranged on the basis of the actual mileage the goods travel over each company. The country demands that more through rail and water routes be established and so far as the water lines are concerned, they are anxious to meet the demand, but they can not do so if they have to carry the traffic at a dead loss.

It may be interesting to know that early in this year the Director General of the United States Railroad Administration announced to a committee of Congress that he was in accord with this plan of more through water and rail routes, and a committee of water lines officials immediately communicated with him and stated that if he meant what he said they were willing to join him. Well, there were several conferences and the water lines filed their briefs and exhibits, but here it is nearly the end of the year and nothing whatever has been accomplished.

I have only one more idea to suggest before I conclude and that is this; the financial and banking interests can assist materially in the movement to revive the use of our inland waterways by helping to finance legitimate and sound proposals put forward by navigation companies. There seems to be no difficulty to get financial support for all the new deep-sea steamship companies which are being organized to sail from here to the ports of the world. Why should our domestic needs be ignored? Just look at the splendid New York State Barge Canal recently constructed at a cost of over one hundred and fifty million dollars waiting to be made use of. Its capacity is estimated at ten million tons yearly, and last year there was barely one million tons shipped through it, due entirely to the lack of navigation companies. What that waterway needs to make it serve the purpose for which it was constructed is a corporation with about twenty millions of dollars capital to furnish the same kind of freight service that the rail lines paralleling it offer the public. This would not be injuring the railroads for there is enough business for both classes of service.

## THE RAILROADS AND THE INVESTOR

THOMAS REED POWELL

Associate Professor of Constitutional Law, Columbia University

**T**HE lesson for the day is "The Railroads and the Investor." As money makes the mare go, so it does the railroads. Money from freights and fares will run the roads after they are built. But the roads must be built before they can be run. Expenditures for initial construction and capital outlays for extensions cannot be squeezed from shippers and passengers. They must be obtained from investors or from the government. There are but two ways of securing the necessary capital for the railroads. One is coercion; the other is seduction. If the government chooses to finance the roads, it may use both coercion and seduction. It can tax and it can borrow. If, on the other hand, we are to finance the roads through private investment, our only recourse is to the arts of seduction. We must persuade those who have money that it is worth their while to become stockholders or creditors of the corporations which own the roads. Whether persons with money will care to put it to the use of the railroads will depend upon what they can look for by way of interest or dividends as compared with what they can hope to get if they put their money elsewhere.

The gentlemen who are to address us this afternoon are to tell us what seductions we must practice on investors to prevail upon them to put their money into railroad stocks and bonds. This may not be the precise point to which their remarks are directly addressed; but it is a point on which all their remarks must bear. For the treatment accorded to those who have already put their money into railroads has an important relation to the seduction of those whose further aid the road must have. If past investors are dissatisfied, future investors will insist on inducements more alluring.

The interests of past investors are supposed to be protected by the courts. Legislatures and commissions may limit the returns of investors by limiting fares and freights. But there is a limit to this limitation. The courts require that the fares and freights be left high enough so that the roads earn what is called a fair return on their fair value. Perhaps we may learn this afternoon

what this so-called "fair value" is; but up to the present moment, nobody knows. It can't be what the roads would be worth if their rates were not subject to regulation, for this would defeat the undeniable power to regulate. It isn't what the roads actually cost, and it isn't exactly what it would cost to build them now in their present partly worn-out condition, though it squints a good deal in this latter direction. The courts have been more explicit in telling what fair value is not, than in saying what it is. Whatever it is, it is some combination of incongruities, some compromise of competing inconsistencies.

The judicial treatment of the problem has been woefully artificial. With an animism which reminds us of the days of the deodand, the courts have talked as though what was being regulated was the roads themselves, the physical equipment of ties and track and rolling stock. Plainly a realistic approach to the problem would have recognized that regulation affects persons, not things. The parties in interest are the shippers and passengers on the one hand, and the stockholders and bondholders on the other. Plainly, too, the situations of the stockholders and bondholders are not the same. The bondholders have contracted for an agreed rate of return. The stockholders have taken a chance. Yet the return to which the court refers is a return to the road, not to the persons interested in the road. The road must have a fair return on *its* fair value. The bondholders then get the return they have contracted for; the stockholders get the rest. Thus where a road is financed largely by bonds bearing interest at a lower rate than that allowed to the road as a fair return on its fair value, the rate of return for the road gives but an imperfect index of the rate of return enjoyed on the stockholder's investment. Yet it is that investment which is affected by rate regulation and which ought to be the primary object of judicial attention as it is necessarily the primary object of judicial concern.

The courts have been much more certain about what is a fair return than about what is fair value. Until very recently they have regarded six per cent as a fair return and have sometimes approved of less. They seem to have been guided by the normal rate of interest on money loaned rather than the normal rate of income from business. Yet, from the stockholder's standpoint, the railroad enterprise is a business, subject to the fluctuations which other businesses must face. Investors would not put

money into railroad stock with no hope of getting more than six per cent and no guarantee of getting that, when they could put it into other businesses where the risk is no greater and the returns are not subject to legal limitation.

Undoubtedly some of the artificialities of which the courts have been guilty tend to counterbalance each other. This is true of the failure to note the relevance of the ratio between bonds and stock and the fixing of the rate of fair return at the normal interest rate on money loaned. Six per cent on the fair value of the road may mean more than six per cent for the stockholders and so tend to put their investment on a par with those in other businesses. So also the rather rigid limitation on the rate of return may be offset by the liberality displayed in the judicial guessing as to fair value. And results which might seem to be a formal injustice to stockholders may be formal only and not substantial, by reason of the circumstances under which the stock was acquired.

Another element to be considered is that rate regulation must often fail to depress the rates to the lowest point that would pass muster with the courts. Governmental regulation of railroads rides two horses that often go in different directions. We wish rates to be reasonable; we desire them also to be proportional. So long as our test of reasonable is based largely on the financial results to the roads, it must follow that a schedule of rates which would be reasonable for one road would be too high or too low for others. If we should reduce the rates on the favorably-situated roads to the lowest point which will yield them a fair return on their fair value, their less favorably situated competitors could not do business unless their rates were equally low. And by hypothesis this would leave them less than a fair return. That such indirect results of lawful regulation of the stronger roads would never be regarded as an unconstitutional taking of the property of the weaker roads must be practically certain. Nevertheless it is a misfortune which we have not thus far sought to put upon the weaker roads. We have dealt with groups of carriers rather than with individual roads. Thus it must happen that the stronger roads have not been restricted to the lowest rates that the courts would sanction. This is nice for the stockholders, but not so nice for shippers and passengers. Here is a problem still awaiting a satisfactory solution.

Enough has been said to indicate how far our existing methods of control fail to deal realistically with the competing interests of the carriers and their patrons. What the results have actually been or what they are likely to be cannot be known by one whose reading had been largely confined to judicial opinions. By and large the courts seem to have tried to protect railroad property in such enhancements of value as are enjoyed by property devoted to other uses. As it is the monopoly position of the roads which gives rise to governmental limitation of their charges, so the primary purpose of rate regulation would seem to be the prevention of exactions that are rendered possible only by such monopoly position. If we mean to go further and prevent the enhancement which other property is still allowed to enjoy, we can hardly expect persons to put their money into regulated enterprises, so long as unregulated enterprises compete for it. If we plan to deny the prospect of any unearned increment, we must certainly offer security against decrement. If we are to seduce investors to put their money into railroads, we must meet the seductions offered by other businesses. The courts seem to have had this necessity vaguely in mind, and to have intended to thwart the rate regulation that would deter investors. If their handling of the problem has been unsatisfactory, it is due in considerable part to the way in which the task has been put upon them. Our legislatures and commissions have dodged the genuine issues in the situation and have felt their way timidly and compelled the courts to grope in darkness.

The topic of this afternoon recognizes that the genuine issue is one of returns to investors so long as the roads continue to be financed by private investment. The approach to the railroad problem from the investor's angle is essential, whether we continue existing methods of governmental control or devise new ones. An understanding of the investor's position is a necessary prerequisite to a decision whether we shall continue existing methods or devise new ones, and, if the latter, to the choice between the various expedients open to us. If we are to stick to some form of seduction of investors, we must know how much seduction is necessary to get the desired results. If investors prove too coy, we shall know that we must try coercion. Coercion means in the long run the raising of funds by taxation or else the very exaction on shippers that regulation seeks to prevent. Coercion leads to governmental guarantees if not to government

ownership. Thus the problem of the investor and the problem of the public touch each other. The public must satisfy the investor if it wishes him to continue to invest. The investor must not demand too much of the public if he wishes the opportunity to invest. Thus the papers of this afternoon's session, though concerned with the railroad problem primarily from the standpoint of the present owners of railway securities, necessarily will throw light on the larger public issues which existing conditions force on our attention.

## THE REVENUE NEEDS OF THE RAILROADS

HOWARD ELLIOTT

President Northern Pacific Railway Company

**Y**OU have complimented me by asking me to appear before you, and I wish to take your time for a few moments to discuss one vital part of the railroad question, namely, "The Revenue Needs of the Railroads."

There are so many features of the present railroad situation that a proper discussion of the whole subject would take many days.

As you know, the Congress, through committees, has been discussing railroad legislation all this year and has not yet been able to come to a conclusion. It seems quite clear, however, that these committees reflect the views of the people that they do not wish government ownership or government control any longer than is absolutely necessary. This makes it all the more necessary to treat the furnishing of transportation as a business function and to permit the railroads to become self-supporting as business enterprises.

This great American railroad system of 260,000 miles, serving 105,000,000 people, is to the nation on a large scale what the farmer's oxen are to him and the rural mail carrier's horses are to him. Just as their oxen and horses must be nourished and kept in good condition to do their work, so must the railroads be nourished and kept in a sound condition if the nation is to grow and our wonderful resources be conserved and developed, and our great future wisely and thoroughly protected.

Prior to Government control the railroad executives realized that in the face of a growing volume of business, the increases in wages and other costs, and the complications of the business were such that this great transportation machine was not receiving sufficient nourishment to keep it adequate in all of its parts for the needs of the country.

Earnest efforts were made from time to time to obtain general increases in rates, not simply in the interest of the bondholders and stockholders, but in the interest of the people as a whole so that they would be encouraged to put part of their great annual

savings into the railroad business in order that the transportation machine would be at all times "ready to serve." An application for a 15 per cent increase in freight rates was made by the Eastern roads in 1917, and was not finally disposed of when the President thought the war conditions made it necessary for him to take possession of the roads, which he did on December 28, 1917.

The President said to Congress on January 4, 1918:

While the present authority of the Executive suffices for all purposes of administration, and while, of course, all private interests must for the present give way to public necessity, it is, I am sure you will agree with me, right and necessary that the owners and creditors of the railways, the holders of their stocks and bonds, should receive from the Government an unqualified guarantee that their properties will be maintained throughout the period of federal control in as good repair and as complete equipment as at present, and that the several roads will receive under federal management such compensation as is equitable and just alike to their owners and to the general public. I would suggest the average net railway operating income of the three years ending June 30, 1917. I earnestly recommend that these guarantees be given by appropriate legislation, and given as promptly as circumstances permit.

The fiscal year ended June 30, 1915, was a poor year; that ended June 30, 1916, a medium year; and that ended June 30, 1917, a fairly good year, and the average net operating income for the three years, generally known as the "standard return" was approximately \$935,000,000. This was the Government's measure of the net earning power of the railroad system of the country at that time.

The Secretary of the Treasury was made Director General and the United States Railroad Administration began to organize all departments. They found very shortly that the revenues to be received from the existing rates were not sufficient to meet the growing expenses, and this subject received very careful consideration. In other words, the administration took the business-like attitude of trying to manage the railroads as a whole so that both ends would meet.

The Interstate Commerce Commission had granted to the Eastern railroads in the summer of 1917 about half of the 15 per cent increase asked for, and granted the remainder on March 15, 1918, after the roads had passed under the control of the government. The amount, however, was entirely insufficient to meet the rising tide of expenses, and on June 10, 1918, the Director General made passenger rates 3c. a mile instead of 2c. and 2½c. that were in effect in many places as the result of state laws, and on June 25, 1918, increased freight rates about 25 per cent.

The administration naturally hoped that these increases in rates, together with economies that it expected would result from unified operation, would take care of the situation and that there would be sufficient earnings to pay expenses, taxes, and the standard return to the owners.

Before the Senate Committee on January 3, 1919, the Director General testified that he felt the results for 1919 would produce a surplus of \$100,000,000 to the government over all requirements, as follows:

Senator Cummins: Then, do you propose, in order to meet the situation, that there shall be another increase in rates?

Director General McAdoo: Not at all, Senator. On precisely the same basis as now exists as to rates, wages and costs of materials and operation, I think we should have a surplus of \$100,000,000 for 1919.

In other words, the United States Railroad Administration took the very proper view of the situation that there should be earnings enough to meet all obligations. This policy adopted by the government at that time seems a sound one and better for the American people, in the long run, than to turn constantly to the national treasury and ask it to make up any deficiency in revenue. The latter plan tends to check initiative, reduces energy and economy, and encourages waste. It is a policy that, in the long run, will make the total transportation bill of the people made up of such rates as they may pay in the first instance, plus taxes to replenish the treasury, greater than if the rate is adjusted to the service and every incentive to economy and energy is preserved.

The net operating income for the first year of government operation failed to meet the standard return by approximately \$235,000,000. This was in spite of the very earnest, sincere and hard work of the Director General and all of his assistants. In that first year the new rates were not effective for the entire period. There was a very serious winter in parts of the country, and war conditions were most onerous and difficult so that the federal administration had unusual conditions to deal with. It is, therefore, fair to say that 1918 should not be taken as a measure of the results under the new rates inaugurated by the government and under the wage scales that it was necessary to pay because of these conditions.

Figures are now ready for part of 1919, and a fair estimate can be made for the balance of the year. The Director General had hoped that income would be sufficient to meet all outgo, but

the results are disappointing. The figures for the nine months, for Class I roads (earning \$1,000,000 or over) show that the proportion of the standard return for that period has not been met by \$245,000,000. During the months of July, August and September the roads have just about earned the standard return, and possibly in October they may do the same, but there is every indication that the year will end with a substantial deficit, perhaps \$350,000,000 for all railroad operations.

We have at our doors in New England an impressive example of the utter inadequacy of revenues. For the five months ended September 30, 1919, which are very good months in New England, as to weather and operating conditions and as to volume of business, because the great summer travel is at its height, the New England roads failed to earn the standard return for that proportion of the year, namely \$15,908,320, by \$6,630,658, or 41.7 per cent.

This group of roads is in the most serious condition and must receive aid from increased rates and earnings as soon as government control and the standard return cease, if they are to survive and serve the public.

The roads north of the Ohio River and east of the Mississippi are also in a very critical condition. South of the Ohio and west of the Mississippi River the conditions are a little better, but they are not good anywhere.

For the country as a whole, the net operating income is only 62 per cent. of the standard return (for Class I roads) for the nine months ended September 30, 1919.

Senator Cummins, in his report to the Senate, dated November 10, 1919, in commenting upon estimates of deficits, says:

It is the opinion of the Committee, without reflecting in any wise upon the Railroad Administration, that in the end the loss will be found to be much greater than the estimates submitted.

These deficits must be considered in any forecast of future requirements, and, in addition, there are other elements to be taken into account.

Because of the difficulties in obtaining men and material, due to the war, not as much work has been done on the equipment of the roads, especially the freight cars, as is necessary to keep them up to that standard which the needs of American commerce demand.

Nor have there been placed in the tracks of many of the

roads sufficient rails and ties, as is necessary for the best health of the property, and there have been some failures to do work of other kinds because of the conditions as to men and material.

The money necessary to bring the condition of the present properties to a higher standard must be spent in the next few years and is an element in considering the revenue needs of the railroads. This amount cannot to-day be stated exactly, but it will be several hundred millions of dollars.

Again, there are some increases in expenses to be met in 1920 which were not effective for the full year 1919, such as the recent change in rates of wages and rules for men working in shops, estimated at about \$50,000,000 a year. Other increases in wages may have to be made, and these will be an important element in the problem.

There is also the probability that as a result of the recent coal strike, fuel will cost more in 1920 than it did in 1919. The railroads' coal bill to-day is running at the rate of at least \$300,000,000 a year, and prior to the war was about \$225,000,000.

Then the world-wide demand for steel, lumber and all materials for reconstruction work and for doing work that has been postponed or suspended since 1914 means that there will probably be no decrease in the prices of these important elements in the railroad expense account, and there may be an increase.

Additional payments must also be made for new capital to be used for increasing the capacity of the roads to serve the public. For five years prior to the war the expansion of the roads was not rapid enough to meet the needs of the country, and during the war period even less has been accomplished.

It is not too much to say that for new equipment, with the necessary shops and tools to keep it in order, there should be spent within the next few years \$3,000,000,000, and, no doubt, an equal amount for tracks, terminals, electrification and other facilities to make the transportation machine equal to the demands of the country, if growth is to continue.

The increased expenses of states, counties and municipalities, because of higher wages, is being reflected in a constantly increased tax rate, and this also must be taken into account when considering "The Revenue Needs of the Railroads."

In 1910 the taxes paid by the railroads of the United States were \$103,000,000, and for 1919 the total taxes will be approximately \$250,000,000.

To offset this in part private management may be able to have more intensive supervision, develop a greater spirit of energy, and a finer esprit de corps upon individual properties which will tend to prevent further increases in expenses, and, in due time, I hope, bring about some reductions.

I think all will admit that long distance management of industrial enterprises is not so efficient or so economical as where there is close, local, authoritative and responsible supervision and enthusiastic leadership.

There is every reason now to expect that the roads will be returned to the owners on January 1. It is hoped some legislation before that date will be passed that will protect the situation until the necessary readjustments between income and outgo can be made and the earning power of the roads restored. Even before the war the net earnings of the roads were not sufficient to attract the new capital needed each year, and these net earnings are even less to-day, although nearly \$800,000,000 has been spent in the last two years in adding to the plant, not counting equipment. It is fair to say that the net earnings of the railroads under present conditions are plainly inadequate to meet the absolute necessities and to provide at all for the future.

The President said, when he took possession of the roads:

Investors in railway securities may rest assured that their rights and interests will be as scrupulously looked after by the Government as they could be by the directors of the several railway systems.

The railroad officers believe that it would be a wise and proper exercise of presidential power and in the interest of an adequate transportation machine for the use of the people for the United States Railroad Administration to restore the balance between income and outgo, which can only be done by increasing the rates. The spirit of the President's statement when he took the roads seems to justify such action. The Federal Administration has the knowledge, power and ability to act and can do the work more promptly than the owners, and the influence of the government would be much more convincing in bringing about a proper result. The President and the Director General, however, have decided otherwise, and the burden of obtaining an increase in rates now rests upon the owners, who have no other way of obtaining revenue. In fact, the Esch Bill, just introduced, imposes upon the owners the burden of filing tariffs within 60 days after government control ceases, for any increases necessary.

They cannot control the prices for materials, nor can they make reductions in wages, although I believe they can, little by little, get greater efficiency in operation. They must, therefore, ask the country to permit an increase in rates, and the Congress to permit the increase to take effect promptly, without undue interference from state and federal regulatory bodies.

Without an increase in rates a very large number of railroad companies will face bankruptcy, and very few of those who escape this unfortunate plight can pay any return to the shareholders.

Director General Hines, in several public utterances, has seemed to assent to the principle adopted by the administration in 1918 of adjusting earnings to expenses. He has, however, indicated that the results of the roads in 1919 up to the time of his public addresses, could not be used as a basis for calculating the increase necessary.

For example, on May 6, 1919, in Washington, Mr. Hines said:

The present unfavorable results naturally lead to agitation of the question whether there ought to be an increase in rates. My own judgment is that the present conditions are too abnormal to serve as a basis for any general change in the level of rates and that it is preferable to defer action on that subject until there shall have been a fuller opportunity to get a more reliable, and possibly a more normal, measure of the conditions, meanwhile resorting to every practicable economy, studying the situation with the greatest care, and keeping the public fully informed as to developments.

And again, in St. Louis, on May 19th:

My own judgment is that there are too many temporary conditions to justify any definite action at the moment in increasing rates. We are going to get some additional economy in operation, a reduction in the cost of material, and undoubtedly a very large increase in business, and these things are going to operate to make the conditions more favorable.

And again, at Omaha, on June 10th, he said:

I have heard it stated a number of times, and I believe it is true, although I have not had an opportunity to check the figures, that when you consider the price paid for everything else, the values that are enjoyed by every article transported by the railroad, a given unit of any commodity will buy more transportation now than it ever did before in the history of the country. A ton of steel or a bushel of wheat or any other unit of any commodity will buy more transportation now than ever before.

The result of that is that freight rates at the present time, instead of being higher than ever before, are lower than before when tested by the value of the unit transported and the amount of transportation which that article transported will buy.

That leads a great many people to urge that there ought to be an immediate increase in rates in order to meet the situation.

I have had the experience, which is rather unique, of having various shippers come to me and urging that railroad rates ought to be increased to take care of this situation. I don't suppose that condition has ever

existed before in this country where the shipping public has voluntarily asked that the rates be increased.

This is by reason of the fact that there has been such a striking object lesson, that railroad costs have increased to much greater proportion than the rates have increased, and, therefore, the railroad operations are not likely to be self-sustaining in business with no increase in rates.

My position on that subject has been that it is important for us not to increase rates more than it is absolutely necessary, that it is very desirable for us to form a better idea than it is possible for us to form at the moment as to the extent to which the present deficit will be eliminated by the expected increase in business.

The railroad officers agree that it is very important not to increase rates any more than is necessary. This is a country of vast distances and complicated transportation conditions, and railroad officers appreciate as well as any class of men in industrial life the desirability of having rates adjusted so that continuous development will go on in the country. They also realize, as they never have before, that it is their duty to the public to take every reasonable step to have rates so adjusted that good service can be given to the public, good compensation to employees, and returns made to present and prospective owners of securities so that capital can be obtained for the necessary expansion of the plant.

Again, Mr. Hines, at Indianapolis, on October 15th, in commenting on the situation, said:

I want to say broadly without at the moment undertaking to go into detail that the railroads of the country at the present time are handling a larger business than they handled last year, and the business they handled last year was larger than the business they had handled in previous years. They are doing that at rates which represent a lower proportion of the value of the things transported than I believe has ever been true in the past. We know from experience that the price of nearly everything has gone up far more than the cost of its production has justified, but the price of transportation has gone up in less proportion than has the cost of producing it.

The Director General has also expressed the fear that any increase in rates that might be made by the government would be reflected in a further increase in the cost of living on the ground that those who sell various articles would add to the prices very much more than any increase in freight rates justified. An increase in the price of anything will, of course, have a bearing on the cost of living, but keeping the railroads on starvation wages will, in the long run, increase the cost of living because production and development will be checked through lack of suitable and adequate transportation for handling the necessities of life and industry. If an increase in rates be used unfairly to increase prices, it is surely a better national policy to check

that tendency by the force of public opinion or by law than to continue a policy which will mean a crippling of the transportation machine, making it unable to meet the needs of the public.

For the first nine month of this year, 108 out of 165 important companies and systems are not earning their fixed charges, entirely excluding, of course, any dividends on their stock or any contributions to improvements that formerly were made out of earnings. For the same period 130 companies are not earning their standard return; in other words, are not up to their pre-war earning power by \$286,000,000. Only 35 companies are earning their standard return, or bettering it, and that only to the extent of about \$41,500,000. These 165 roads failed by nearly \$57,000,000 to earn their fixed charges.

I think the following statements are sound:

1. That a day's pay, or a unit quantity of any article of commerce, will purchase far more transportation, both freight and passenger, to-day than ever before in the history of the country. In other words, rates have not increased in proportion to the increase in wages and prices of commodities.

2. That the results, as the year 1919 draws to an end, give no encouragement to the hope that rates, wages, costs and volume of business will produce a net operating income equal even to the standard return. The deficit may be \$350,000,000, and \$450,000,000 compared with the year ending June 30, 1917.

3. That the so-called "Standard Return" of \$935,000,000 (for all roads) does not represent a sum large enough to attract new capital needed for future expansion, and the net operating income for the year ended June 30, 1917, was \$1,035,000,000, or \$100,000,000 more than the standard return. Since then the plant has been increased in value and capacity and is fairly entitled to a much larger return.

4. That many millions of dollars must be spent in doing work on equipment and tracks that could not be done during the war period, and additional expenses must be met in 1920, such as higher prices for fuel and additional charges not included in 1919 accounts, and that there is a steady and large increase in taxes.

5. That a failure to obtain additional revenue will mean bankruptcy for many roads and serious financial difficulties for all.

6. That this condition will check the expansion of facilities just at a time when the country should be getting ready for an increased participation in world affairs.

7. That it is better for the country for the railroads to be supported through rates rather than by contributions from the state and national treasuries.

8. That the total additional revenue needed, while running into very large figures, is not large, considering the needs and powers of a virile nation of 105,000,000, that has absorbed \$21,000,000,000 of Liberty Bonds in two years. They can well afford to have a good Transportation Machine, and to encourage rather than to discourage the owners to create and maintain it.

For the purpose of making good the disparity between income and outgo that has grown up as a result of the conditions developed by the war, for the purpose of restoring the earning

power of the roads which has been impaired, for the purpose of establishing that earning power on a basis that will create a credit for the immediate upbuilding of the transportation machine, the railroads are now preparing to ask for an increase in rates. How much this increase should be I am not prepared to say to-night. It will require patient, careful study. The railroad officers have appointed a committee of eight executives, representing all parts of the country, of which I have the honor to be chairman. This committee is now actively at work taking preliminary steps in an effort to answer the question as to what "The Revenue Needs of the Railroads" are and how they can be obtained through suitable tariffs. This committee and its associates, I can assure you, are fully alive to the seriousness of the situation and of the position of trust they occupy in trying to solve the problem fairly in the interest of the public, the great army of employees, the very large number of owners, and the still larger number of people who are vitally interested because of their savings bank deposits and insurance policies.

I believe the sober judgment of the people will realize the justice of the request and will support it. Time is most important, and the help of such organizations as this with members of Congress and with regulatory boards will be most beneficial.

I hope I have made it clear to you that an increase in rates is absolutely necessary in order to meet "The Revenue Needs of the Railroads" so that they can do their full duty to the public, and that you can give your support to our reasonable requests for increased rates.

## RAILROAD LEGISLATION

ALFRED P. THOM

General Counsel of Association of Railway Executives

**U**NDER the limitations of time which this occasion necessarily imposes, it will be impossible to discuss, except in the most general way, the railroad problem and the system of legislation appropriate for its solution.

From unmistakable manifestations of public opinion, it must be assumed that a system of governmental ownership and operation will not, for the present at least, be accepted by the American people.

Private ownership and operation being thus the only aspect of the matter (at least for the time being) open for consideration, the question is what system of governmental regulation shall be adopted in order to make railroad transportation, privately owned, supported and operated, a success and adequate to the needs of the public.

It is unthinkable that there can be any difference of purpose in this regard on the part of any of those charged with responsibility in the matter. Whatever difference there is must be a difference as to methods. All must agree that the system of regulation, whatever it is, must insure the adequacy and efficiency of transportation, for the capacity of the instrumentalities of transportation marks the maximum capacity of productive industry, and the public will never consent that productive industry shall be artificially limited by inability to reach the markets of the world.

It is important, then, to inquire what, broadly speaking, are the essentials of an adequate and efficient transportation system supported by private capital.

In the transportation crisis which now confronts the country, there are two periods to consider and provide for:

First, the period which must intervene between the end of Federal control and the time when such a relationship is established between revenues and expenses as to make the roads self-sustaining. This may be termed the "Period of Restoration"; and,

Second, the period succeeding the Period of Restoration, which may be termed the "Permanent Period."

As to the Period of Restoration, there seems to be general concurrence in the view that a means must be devised to assure to the carriers reasonably adequate revenues during this period and to arrange for the funding of their capital indebtedness to the Government. While differences exist as to how and the extent to which this shall be done, it is hoped that a just solution will ultimately be reached.

It would be difficult for the great facts of the situation to escape intelligent attention. The carriers have, for public purposes, been deprived of the use and management of their properties for two years. During that time their organizations have been disrupted; much of the traffic normally tributary to the individual lines has been diverted to others, and the rolling stock of each carrier has been scattered from ocean to ocean. In addition to this the labor expenses alone of the carriers as a whole have been increased during these two years approximately a thousand millions of dollars a year.

Time and money will be required to restore the individual carriers to the effective enjoyment of their several properties and to the efficient organization which is essential to success. I think it may be safely assumed that these conditions will be recognized and that some provision will be made to cover this Period of Restoration. I will not refer further to this aspect of the matter, but will turn my attention to the Permanent Period, and to the principles of regulation which should be adopted by the Government as a permanent policy.

If the transportation facilities which are adequate to-day would be adequate next year and for all times in the future, the problem would be comparatively simple. In that case it would be necessary to provide only for the maintenance and operation of the instrumentalities of transportation at standards of capacity and efficiency adequate for present needs. This could be easily done. But we live in, and must think and act for, a vast and fertile land which has not yet reached the limit of its development—a land which will grow for centuries to come in both population and in the products of its industry. This means that the capacity of transportation must grow so as to at least keep pace with—in fact, it should somewhat anticipate—the growing and expanding needs of commerce.

To provide for this will require the constant input of new capital. The amount of such new capital needed to insure the ade-

quacy of transportation facilities, was estimated by the late James J. Hill at not less, for a series of years, than one thousand millions of dollars a year. The statistics of the Interstate Commerce Commission indicate an actual input for each year of the nine between 1907 and 1916 of about \$579,000,000. The sum of about \$576,000,000 was actually expended for additions and betterments by the Federal Railroad Administration during the calendar year 1918.

Without undertaking to forecast the actual amount that will be required in the future, it is manifest, if transportation facilities are to be kept measurably adequate to the needs of commerce, that many hundred millions of dollars of new money must be provided each year by private investors. They must be attracted. They can not be coerced.

The problem, therefore, of the railroads, and the problem of the public in respect to transportation, is a problem of credit.

The test, which any system of governmental regulation of privately supported transportation facilities, must successfully stand, is whether it adequately provides for and maintains the necessary railroad credit.

If it does not, it must be changed or the system of private ownership must be abandoned; if it does, the system of private ownership will succeed. Let us look, then, at the question of credit from the standpoint of the private investor, for it is with him, in the final analysis, that the system of regulation must reckon.

When, under the existing system, he is approached with the proposal that he invest in a railroad enterprise, with what is he confronted? He is offered an investment in a business as to the revenues of which he has no control. They are controlled for him by governmental authority. Nor can he rely on the control being based on business principles. The standards of regulation are set by legislative bodies sensitively alive to political considerations and limitations. This is inherent in our system of government. Legislative action will always be responsive to public opinion, no matter how uninformed or misinformed. There can be no assurance to the investor that public opinion will be always governed by a broad appreciation of business needs and conditions.

Moreover, the investor can not be certain of a uniform or consistent standard of regulation, political or business, inasmuch as a part of his revenues are regulated by the national authority, and the remainder by the several states through which the roads

may run, with their inharmonious and divergent policies. It must, I think, be admitted that, as the system of regulation now stands, there is little on the revenue side to attract the private investor.

Turning to the expense account, the investor sees that he would have far less control over his expenses than in most of the other subjects of investment open to him. Aside from the peculiarly exposed position of the railroads in labor controversies, their expenses may be added to by governmental requirements as to facilities and service—the separation of grades, the enlargement of train crews, the enlargement and improvement of stations, the equipment of cars and engines, and many other matters legitimately subject to governmental regulation; and here, again, both the national Government and the governments of the several states, all, possess powers to increase the expense account.

Thus the expense account of the business to which the private investor must be attracted, is seen to be largely beyond the owner's control.

Without referring to other deterrent conditions—such as the hope he must abandon of speculative or large returns—if he embarks in this line of investment, and the positive attractions of competing subjects of investment which are free from governmental regulation, from political interference, and which are unrestricted in opportunities, let us turn to the things that must be done, if the policy of private ownership and operation is to succeed.

From what has been said, it is manifest that it is a condition precedent to any successful system of regulation that there shall be an assurance to the investing public of revenues to the carriers adequate to attract the necessary investment. The old system of unlimited and uncontrolled discretion in the Interstate Commerce Commission will not be sufficient. Congress has recently received from every investing source the assurance that this system has not prevented an alarming decline of railroad credit. This conclusion has been reflected in each of the leading plans proposed to Congress—in the Warfield plan, by subjecting the discretion of the Commission to a fixed statutory percentage on values as a guide to rates; in the Chamber of Commerce plan, by likewise subjecting the Commission's discretion to a permanent rule of a fixed percentage on values; and in the Railway

Executives' plan, by securing from an independent board, charged with the obligation to see that transportation facilities and service are at all times adequate, a certificate of the amount of revenue that is necessary that rates shall provide. In fact, it can not be denied that the conviction is widespread, and, outside of governmental circles, universal, that something must be added to the discretion of the Interstate Commerce Commission if the confidence of the investing public is to be attracted.

The railway executives, from advices which they can not disregard, apprehend that no fixed percentage on values can be adopted which will be adequate for the needs of the carriers; and, if a fixed percentage is adopted, it will be accompanied by other conditions which can not be satisfied without undermining the very foundations of all property. They, accordingly, have not seen fit to recommend a percentage figure in the statute, but have urged, and are urging, upon the attention of Congress the necessity for a rule of rate-making which shall be precise and definite, and shall contain a statutory assurance that the proper elements in determining what revenue rates shall provide, will be properly considered by the regulatory body, and the necessary amount of revenue will be raised. We do not think that there can be a legitimate doubt that the revenues, considered in respect to average conditions in a traffic group, should be adequate to provide (1) for the expenses of operation, including labor and taxes; (2) a fair return upon the property used or held for the public service; and, (3) a surplus sufficient as a basis of credit to attract the new capital needed for the facilities and service which the commerce of the country must have. We think, further, that, in the present condition of inadequate credit under the system of unrestricted discretion in the Commission, it is necessary to provide an authority whose express statutory duty it shall be to see that the facilities and service in transportation are up to the requirements of commerce; to study the credit of the carriers with reference to their needs in order that they may be able to provide these facilities; and to certify the facts to the Commission, which should take them as their guide in rate making.

If these requirements are put in the form of definite statutory duties, we believe that the administrative authorities will faithfully administer them, and, in doing so, will be supported by an express statutory mandate in providing the revenues declared necessary by the legislature.

We believe that all revenues must come from rates; that it is as much beyond the limits of constitutional regulation to make the rates too high for the service as it is to make the rates too low; and that no rate can lawfully be permitted to be collected which it is unlawful for the carrier performing the service to retain.

If the private investor is to be attracted, it is, in our judgment, necessary to avoid taking away any part of a carrier's earnings from lawful rates. To do so would, in our opinion, be unconstitutional. It is not proposed, however, to state here the reasons for that view.

If it is constitutional, it is all the more dangerous, for, in that event, there would be no relief from it in the courts. The thoughtful investor would, of course, appreciate that the consequence of the assertion in the law of a legislative power to take all of the earnings of a road at lawful rates above a limit fixed in the discretion of this Congress, would be that the next, or a succeeding, Congress might take still more, until the point of acknowledged confiscation is reached. The railroad industry would thus be the only industry subject, at the present time, to the assertion of such a power, and the question would be whether the investing public would seek the one subject in the field of industry where the amount of its earnings at lawful rates might be taken away at legislative discretion or caprice. To engraft this principle upon the system of railroad regulation would be to implant in it the seeds of its own death, because no industry can survive when it is thus discriminated against, and thus made unattractive to the investing public. It must be realized that while what has been said is justified even from the standpoint of rates, it is equally clear that, irrespective of rates, the proposal is both indefensible and destructive. For example, let us take two roads costing exactly the same amount and doing exactly the same business at exactly the same rates. One of these roads is well managed. The money spent upon it has been used in reducing grades, in eliminating curves, in acquiring engines with greater motive power, and in other directions which promote economy. The money spent upon the other has not been wisely spent. The *net* results of the two will be entirely different—the difference not being due to difference in cost, or to difference in business, or to difference in rates, but entirely due to difference in financial management, in wisdom of conception, and in operation. One may earn precisely the amount Congress will be willing for it to retain,

the other more. The proposal is to take from the better managed road all that it earns over a given figure, and reduce it to the dead level of the other. Outside of the question of law or morals, such a proposal would absolutely destroy enterprise, initiative and good management; and these elements of advantage to the public would be thus withdrawn from the public service.

May I not digress at this point to suggest that this principle would open wide the door to socialism? If the principle can be applied to railroads, which are now regulated by public authority, what answer can be made to the effort to apply it to any subject which may hereafter be regulated, such as fuel, the manufacture of essential articles, or even money? The rate on money is even now regulated by public authority. Is it not easy for the legislative authority to declare that the interest rate is made as high as it is out of consideration for those who have little money to lend and are thus weak financially, that it is too high for the strong, and that a part of the earnings of the strong at the legal rate must be "recaptured" and taken away? If the inequality of conditions as to the possession of money can be removed, then the dream of the socialist will be realized. Is it not essential that all those who value democratic institutions—based, as they are, upon equality of opportunity and security in the possession of the fruits of labor—should make emphatic protest against the new doctrine that would take these away, and should insist that the limit of legislative authority as to railroad rates is to safeguard the justice and reasonableness of the charge, and can not, without an overthrow of our institutions, extend, by any power, except that of taxation, to the taking of any part of earnings at lawful rates? The only basis for this novel assertion of power would be that a given amount of earnings is too large according to the existing standard of legislative discretion or caprice, and for that reason alone may be taken away. The consequences of such a doctrine strike at the very foundation of orderly government with limited powers.

Returning now to the railroads, and if, as above suggested, a method of securing adequate revenues is provided, the question arises as to where these revenues are to come from. It is manifest that they should not all be provided by any one class of traffic. They should not all come from interstate commerce, nor should they all come from the state commerce of these interstate carriers. No policy can be sound which does not properly

distribute the burden of raising these revenues equitably among all the commerce of the interstate carriers, state and interstate. How can this equitable distribution be made? There can be no assurance of equity if one authority fixes one class of these rates, and another authority, or many other authorities, fix the remainder. There must be some way of bringing the two together.

The constitutional duty and power to regulate interstate commerce rests upon the national Government, and that Government should be the authority to make the distribution of the burden of raising the needed revenues over all the traffic of the interstate carriers.

We are told that this cannot be done; and that, whatever the result, some other system than that of a single and homogeneous regulation must be provided.

What greater commentary could there be on the exposed position of the railroad industry? The national Congress, in all matters within its constitutional jurisdiction, represents all the states. It is not a foreign power. It represents all the states in the matter of their foreign relations, in the matter of providing for the common defense and of making war, in the matter of the establishment of a national currency, in all matters relating to imports and exports, and in providing and maintaining a system of post offices and post roads. It is also, by the Constitution, the representative of all the states in respect to the regulation of interstate and foreign commerce. Singularly enough, of all the powers above mentioned, it is only this power of regulating commerce which has been dissented from by any section of public opinion, and yet the necessity for establishing equality of commercial opportunities among the several states was the most potent and direct influence in bringing about and establishing the Union. The situation, just prior to the adoption of the Constitution, is thus described by Mr. Fiske in his "Critical Period of American History:"

"The City of New York, with its population of thirty thousand souls, had long been supplied with firewood from Connecticut, and with butter and cheese, chickens and garden vegetables from New Jersey. This trade, it was observed, carried thousands of dollars out of the city and into the pockets of the detested Yankees and despised Jerseymen.

It was ruinous to domestic industry, said the men of New York. It must be stopped by those effective remedies of the Sangrado school of economic doctors, a navigation act and a protective traiff.

"Acts were accordingly passed obliging every Yankee sloop which came down through Hell Gate, and every Jersey market boat which was rowed across from Paulus Hook to Cortlandt Street, to pay entrance fees and obtain clearances at the Custom House, just as was done by ships from London or Hamburg; and not a cart load of Connecticut firewood could be delivered at the back door of a country house in Beekman Street until it should have paid a heavy duty. Great and just was the wrath of the farmers and lumbermen. The New Jersey legislature made up its mind to retaliate. \* \* \* Connecticut was equally prompt. \* \* \* By such retaliatory measures, it was hoped that New York might be compelled to rescind her odious enactment. But such meetings and such resolves bore an ominous likeness to the meetings and resolves which, in the years before 1775, had heralded a state of war; and but for the good work done by the Federal Convention (in adopting our Constitution) another five years would scarcely have elapsed before shots would have been fired, and seeds of perennial hatred sown on the shores that looked toward Manhattan Island."

It was thus the states that insisted that an authority which represented them all should regulate commerce between them; for, as stated by Chief Justice Marshall:

"The Government of the United States is the Government of all; its powers are delegated by all; it represents all and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them."

It thus becomes not a violation of states' rights, but is essentially *a right of each state*, to have the instrumentalities of interstate commerce regulated by a governmental authority which represents all the states, and can establish a uniform standard of commercial facilities and opportunities, and not to be controlled by the narrow or selfish policy of a sister state.

For the reasons thus imperfectly and inadequately stated, it

# The House and Senate Railroad Bills

## A Digest and Comparison Prepared November 17, 1919, by Richard Waterman

Secretary, Railroad Committee Chamber of Commerce of the United States

The Chamber of Commerce of the United States has prepared for the information of its members the chart printed below showing, in convenient form for comparison, the most important provisions of the two general railroad bills now before Congress. The Each bill, H. R. 10453, was passed by the House of Representatives November 17, 1919, and at once sent to the Senate for action. The Cummins bill, S. 3288, was reported to the Senate October 22, 1919, by the Senate Committee on Interstate Commerce. It will probably be taken up for consideration by the Senate as soon as the regular session of Congress opens December 1, 1919.

The two bills differ in many important particulars. As soon as the Cummins bill is passed by the Senate the two bills will be sent to a conference committee, which will first harmonize the conflicting provisions and then report out a conference bill that will first be passed by both the Senate and the House and then be sent to the President for his approval.

The Chamber of Commerce has also prepared the following brief summary of the principles of railroad legislation approved by the business men of the country in a referendum vote that was completed July 24, 1919. The summary, after stating a principle, shows in each instance whether or not it has been incorporated in one or both of the bills.

The principles approved by the business men in Referendum 28 of the Chamber of Commerce of the United States are as follows:

(1) Adherence to the policy of corporate ownership and operation with comprehensive government regulation. (*Senate and House bills.*)

(2) Return of the roads to corporate operation as soon as remedial legislation can be enacted. (*Senate and House bills.*)

(3) Adherence to the period of federal control as now fixed unless and until the impossibility of enacting remedial legislation within this period clearly appears. (*Senate and House bills.*)

(4) Permission for consolidation in the public interest, with prior approval by government authority, in a limited number of strong competing systems. (*Senate and House bills.*)

(5) Requirement that railroad companies engaging in interstate commerce become federal corporations with rights of taxation and police regulation reserved for the states. (*Senate bill.*)

(6) Exclusive federal regulation of capital expenditures and security issues of railroads engaged in interstate commerce with provision for notice and hearings for state authorities. (*Senate and House bills.*)

(7) Federal regulation of intrastate rates affecting interstate commerce. (*Senate and House bills.*)

(8) Adoption of a statutory rule providing that rates in each traffic section shall yield an adequate return on a fair value of the property as determined by public authority. (*Senate bill.*)

(9) Creation of a Federal Transportation Board to promote the development of a national system of rail, water and highway transportation and the articulation of all transportation facilities. (*Senate bill.*)

### SENATE COMMITTEE BILL.

The Cummins bill, S. 3288, introduced October 22, 1919, presents the recommendations of the Senate Committee on Interstate Commerce. It provides for:

Return of all railroad and transportation systems to corporate ownership and operation on the last day of the month, in which the act is approved.

Consolidation of all railroad properties in accordance with a plan previously adopted by the Federal Transportation Board, and approved by the Interstate Commerce Commission, into 20 to 35 separate competing systems, each owned and operated by a distinct Federal corporation—consolidation to be voluntary if accomplished within 7 years, and, thereafter, to be compulsory.

Federal incorporation of all railroads with a requirement that each corporation shall include in its board of directors two representatives of classified employees, and two representatives of the Government.

Exclusive regulation and control by the Transportation Board of the issuance of stocks or bonds by railway or water common carriers; and of the purposes to which the proceeds of the sale of such securities may be applied.

Continuation of rates that are in effect at the termination of Federal control, until changed by competent authority.

Provision that new rate schedules filed with the Commission within 60 days after Federal control ceases, shall become effective within four months after they are so filed, if approved by the Commission.

Requirement that the Commission shall divide the country into rate districts, and that railroad operating income groups as an aid in determining the adequacy of rates in producing revenues.

Regulation of joint rates that affect interstate commerce of maximum and minimum rates and of the division of joint rates by the Interstate Commerce Commission under a statutory rule providing that the railway carriers, as a whole, in each rate-making district, shall be allowed to earn an aggregate annual net railway operating income equal as nearly as may be to 5 1/2% upon the

### HOUSE BILL.

The Each Bill, H. R. 10453, was passed by the House of Representatives, November 17, 1919, and sent to the Senate for action. It provides for:

Return of all railroads and systems of transportation to private ownership and operation, on the last day of the month, in which the act is approved.

Consolidation, unification or merger by purchase, lease, stock control, or in any other way of any two or more carriers, or the pooling of their traffic earnings or facilities, to the extent that the Commission indicates will be in the public interest.

Federal incorporation opposed, because it may be unconstitutional and would probably entail large expense, long delays and a vast amount of litigation.

Exclusive and plenary jurisdiction of the Interstate Commerce Commission over the issuance of stocks, bonds and other securities by common carriers, the purpose of any proposed issue and the use of the proceeds thereof.

Continuation of rates that are in effect at the termination of Federal control, until changed by competent authority.

Requirement, that general increases in rates must be asked by the carriers within sixty days after the return of the carriers to private control.

Creation of regions for incorporation, administration and rate-making purposes, opposed because it would limit competition, and would make rate-making based on average conditions of carriers within a given region an impossible task.

Regulation of all rates that affect interstate commerce, of maximum and minimum rates and joint rates and of the division of joint rates by the Interstate Com-

Adequate Revenues and Credits	Reserve Funds.	<p>Creation by each road of an individual Reserve Fund, drawn from its earnings and surplus, and deposited in a separate bank account, to be used for the purpose of making good any deficiency in the general contingent fund drawn from their excess earnings to support the credit of the railroads of the country as a whole.</p> <p>The Company Reserve Fund may be drawn upon by the carrier whenever its annual net operating income falls below 6% of the value of the property. The general railroad Contingent Fund may be used by the Transportation Board in furthering the public service rendered by the carrier, either by way of purchase, lease or rental of transportation equipment and facilities to be used by the carrier, or by way of loans to the carrier.</p> <p>Consolidation of all railroads into 20 to 35 systems (whose capitalization in each instance shall not exceed the value of the property) so organized that, with uniform rates, and under efficient management, each can earn substantially the same rate of return on the value of its property.</p> <p>Guarantee to all railroads, for six months after Federal control ends, of an operating income equal to the standard return for the same period paid during Federal control.</p> <p>Extension of carrier indebtedness for capital expenditures made by the Government, during Federal control, for a period of ten years with interest at 6%.</p>
	Consolidation.	<p>Creation of three Regional Boards of Adjustment each composed of six members—three representing labor and three the railway carriers—to hear and determine all complaints, grievances and disputes other than controversies relating to wages and working conditions; with appeal to the Committee of Wages and Working Conditions in case of a deadlock.</p> <p>Working Conditions, composed of eight members, four representing labor and four the railway carriers, to hear and determine all controversies respecting wages and working conditions of employees, with appeal to the Transportation Board in case of a deadlock.</p> <p>In determining the fairness, justice and reasonableness of wages and salaries, the Board shall take into consideration: (a) the scales of wages paid for similar kinds of work in other industries; (b) the relation between wages and the cost of living; (c) the hazards of employment; (d) the training and skill required; (e) the character and difficulty of the employment.</p> <p>Declaration that decisions of the Transportation Board of Adjustment, Government, shall be final; and that railroad strikes and lockouts are unlawful.</p>
	Wages and Working Conditions.	<p>Maintenance of the Interstate Commerce Commission with authority.</p> <ol style="list-style-type: none"><li>(1) To fix Interstate rates that shall be just, reasonable and adequate;</li><li>(2) To determine the valuation of railroad properties;</li><li>(3) To prescribe uniform accounting systems for all carriers;</li><li>(4) To approve amendments and changes in the regulatory functions now exercised by the Commission, excepting those transferred to the new Transportation Board;</li><li>(5) To exercise all other regulatory functions now exercised by the Commission, excepting those transferred to the new Transportation Board.</li></ol> <p>Creation of a Transportation Board, composed of 5 members appointed by the President:</p> <ol style="list-style-type: none"><li>(1) To prepare and adopt a complete plan for consolidation subject to the approval of the Commission;</li><li>(2) To make inquiry continuously concerning (a) the transportation facilities and (b) the state of the credit of all common carriers; and (c) the new capital which the public interest may require any carrier to secure.</li><li>(3) To represent the public interest in hearings before the Commission;</li><li>(4) To recommend to Congress from time to time, such measures and policies as in its opinion will promote and protect the public interest;</li><li>(5) To exercise certain executive and administrative functions now exercised by the Commission, including the administration of the car service act; (b) the safety appliances act; (c) the hours of service act; (d) the locomotive boiler inspection act; and others of like character;</li><li>(6) To provide, when necessary, for the re-distribution of traffic and the joint use of terminal or other facilities;</li><li>(7) To exercise exclusive and plenary power over the issuance of securities by carrier;</li><li>(8) To serve as a Board of final appeal in labor controversies;</li><li>(9) To prepare and publish for the information of carriers, shippers, and all schedules of ocean-going common carriers showing routes, sailing dates and rates charged by each carrier; and</li><li>(10) To exercise other important regulatory powers, belonging to the Federal Government.</li></ol>
	Funding of Debt.	<p>Creation of three boards of adjustment, each authorized to hear and decide all controversies between the railroads and certain classes of their employees with regard to wages, hours of service and conditions of employment; and three committees to make final decisions on all matters referred to them.</p> <p>Board of Adjustment No. 1, composed of eight members—four representing the engineers, firemen, conductors and trainmen, and four representing the railroad executives.</p> <p>Commission on Labor Disputes No. 1, composed of eight members similarly chosen.</p> <p>Board of Adjustment No. 2, composed of twelve members—six representing the machinists, boiler-makers, blacksmiths, electricians, sheet-metal workers and electrical workers, and six representing the executives.</p> <p>Commission on Labor Disputes No. 2, composed of twelve members similarly chosen.</p> <p>Board of Adjustment No. 3, composed of eight members—four representing the telegraphers, switch-men, clerks, and way and shop laborers, and four representing the executives.</p> <p>Commission on Labor Disputes No. 3, composed of eight members similarly chosen.</p>
	Government Guarantee.	<p>Consolidation of two or more railroads permitted whenever the Commission decides that it will be in the interest of better service or economy of operation, or will aid in solving the problem of the weak roads.</p> <p>Guarantee to all railroads, including short lines and express companies, for six months after Federal control ends, of an operating income equal to the standard return for the same period paid during Federal control.</p> <p>Extension of carrier indebtedness to the Government, after the rental owed by the Government has been settled, for a period of fifteen years, on demand notes, paying 6% interest.</p>
Non-carrier (as provided in Section 11a of the Act to Regulate Commerce).	Creation by the Government, of a \$250,000,000 revolving fund from which carriers may obtain, during the first two years of resumed private operation, loans bearing 6% interest, and maturing in five years.	
	Consolidation of two or more railroads permitted whenever the Commission decides that it will be in the interest of better service or economy of operation, or will aid in solving the problem of the weak roads.	
	Guarantee to all railroads, including short lines and express companies, for six months after Federal control ends, of an operating income equal to the standard return for the same period paid during Federal control.	
	Extension of carrier indebtedness to the Government, after the rental owed by the Government has been settled, for a period of fifteen years, on demand notes, paying 6% interest.	
	Creation of three boards of adjustment, each authorized to hear and decide all controversies between the railroads and certain classes of their employees with regard to wages, hours of service and conditions of employment; and three committees to make final decisions on all matters referred to them.	

is submitted that, if a system of transportation supported by private capital is to succeed, it is necessary:

First, That revenues shall be provided sufficient to enable the carriers to efficiently perform their public duties, and, to that end, that a rule of rate making be established which shall express, as a plain statutory requirement, the elements that must be considered by the rate making power, and that the Commission, in making rates, shall be guided by the expert advice of a board specially charged with the responsibility of seeing that the transportation facilities and service are adequate to the needs of commerce, and with the duty of ascertaining and certifying to the Commission the amount of revenues the carriers need in order to provide them; and

Second, that the burden of providing these revenues shall be properly distributed by a single authority—which, in the nature of things, can only be the national Government—between all the traffic, state and interstate, of these interstate carriers, so that no class of traffic shall be unduly burdened, and no carrier shall be required to furnish service of any class at less than reasonable compensation.

In other words, we ask for a system of harmonious regulation, based on business principles—a system which shall not only contain the principles of correction and repression, but also the assurance of proper and adequate encouragement to those who lawfully engage in this basic and essential industry.

## RELATION OF VALUATION TO INVESTMENTS

THOMAS W. HULME

Vice-Chairman of the President's Committee on Federal Valuation

**I** SUPPOSE the greatest act of discourtesy would be to deny the introduction of the host, and yet it is farthest from my purpose to talk upon fair value. There isn't any such thing as fair value. It is just value. It is because there has been so much talk of fair value in rate cases that we have all this confusion upon the subject today.

It is not my intention either to go into the many phases of the valuation problem, but rather it is my desire to suggest to investors that they should not accept what has been given out as valuations by various state commissions as representing the true value of their property. Nor should they take these reports that are being given out by the Interstate Commerce Commission, as representing value, because they are not even an attempt upon the part of the Commission to determine value. They are merely inventories or reports covering the investigations made by the engineering, land and accounting sections of the Commission of things that are to be taken into consideration in determining value.

To come directly to the subject which I have chosen to speak to you upon, the "relation of valuation to investments," we should have a common understanding of the terms "valuation" and "investment." The present investment is not necessarily what was originally put into the property. The corporate ownership may have changed hands upon a different basis; some portions of the physical property may have increased in value and some may have decreased in value. The Supreme Court of the United States has said that it is the property and not the original cost of it that is protected by the Constitution, and of which property the owner may not be deprived without due process of law. Therefore, as it is the property that is the investment, it means the investment is measured by the present value.

The determination of the value of property, i.e., of privately owned property, not in public use is ordinarily measured by what it would bring in exchange, usually determined by its earnings past, present, and prospective. But that cannot be the same when you come to deal with private property that is subject to

public use, because there regulation immediately enters and, to a certain extent, determines the result.

Now regulation cannot go to the extent of destroying the value of the property, nor can the owners of the property make such unreasonably high charges as to increase the value thereof. The problem, therefore, is how is this situation to be met? Where rates themselves are in question, the value cannot be determined by the capitalization of the net.

This problem, in the twenty-five years that it has been under consideration, has many times been before commissions and courts. Almost always, as the chairman stated, they have dodged the real determination. They have approached it from the standpoint of what seemed to them fair, but as the Constitution stands in the way of taking any portion of the property, without due process of law, they have called their conclusions, value. These conclusions, reached by many different commissions, without the determination of correct principles by the courts, because, as the chairman says—and I do agree with him sometimes—they have not been definite or have not been reached with courage, have left the matter in an uncertain condition until, perhaps, the present time when it seems to be clarified.

The court has said that the value of such property should be determined by the exercise of a reasonable judgment in the consideration of all the pertinent facts, including the actual investment if known, the present cost of production of the property, its condition, its earnings, both at the present time and under contemplated rates, and all other pertinent facts.

When these decisions have been made, it has not usually been known to which of these factors the commission has given the greatest weight, but it has been quite clearly shown that, while in the few condemnation cases, that is, the taking of the ownership of a public utility, it was not only the physical property that had to be paid for, but it was also the value of the business, the enjoyment of the business, that had to be paid for. Nevertheless, there has been generally a tendency to deny in a rate proceeding that the business had to be taken into consideration, but, in a decision by the Supreme Court of the United States in June of this year (the Denver Water Company case) it seems to be clearly decided that, even in a rate proceeding, consideration must be given not only to the bare bones of the property, but also to the business of the utility. That seems to be in accordance with com-

mon sense, because I think it is generally recognized that property is worth very much more after it has developed a business than it would be when it was first finished.

We, therefore, have, as I understand it, in the valuation of property privately owned but used for a public purpose, two major elements for consideration. First, the valuation of the physical property, next the valuation of the business, ordinarily referred to as "going concern" value; in the case of a private business not subject to Governmental regulation, it is commonly referred to as "good-will," although the term "going concern" embraces very much more than good-will. A local monopoly, such as water, gas or electric property, perhaps, cannot be said to have good-will, but a railroad where the business has been built up under competitive conditions, as most of these railroads have been, many of them, enjoy good-will, so that in some cases the good-will would be present; in other cases it would not.

Our first consideration, therefore, is the determination of the value of the physical property. Unquestionably the courts have held, in many cases, that the cost of reproduction properly applied is the measure of the value of the physical property. In the case of any normal property, i.e., one whose existence is justified, it certainly must be held that it is worth its cost of reproduction under a proper method. It is conceded that there may be cases of railroads and other utilities that have been constructed where they are not needed, and I except that class of property to my contention. But great care must be taken in such a classification of any property lest injustice be done.

Now, I am not saying that the cost of reproduction must necessarily be at present-day prices, but I am saying it must be upon reasonable conditions that would be generally acceded to as being reflective of a general situation; if, however, any governmental authority should attempt at this time, when we have probably reached a permanent level of higher prices, to take the property of such a company, there is no doubt in my mind but that in a condemnation proceeding the court would hold that the trend of prices has been so unmistakably to a higher level that the present-day prices would apply.

Therefore, I say to investors that the weight of the decisions of our courts are so unmistakably in the direction of a protection to them in a valuation proceeding that they should not be misled by proceedings in the past which have been made solely from the

standpoint of what somebody thought was "fair" to determine in a rate case.

What has been the effect of such valuations, such "fair" valuations? The unmistakable result has been to reduce the net earnings, to impair the credit until we have reached the present stage. Now, if the credit is to be restored, as Mr. Oldham and other speakers have said, it must be through an authority to increase the charges to a point where they will not only yield a return on the present investment, but also yield a return on the amount of money that it is necessary to provide for extensions and additions and betterments.

So frequently governmental bodies overlook that point in establishing their rate basis. They try to fix it on what has been sufficient for the past, overlooking the fact that provision must also be made for the new capital that is going into the property. If we have in the case of a justified property that the valuation of its physical property should be its cost of reproduction, provided that property has been properly maintained for the purpose for which it has been used, we then have to consider what effect in reaching the total or true value of that property must be given to its earning power. Earning power means potential, future developments and not merely the present basis of earnings.

There are many properties that are unquestionably worth more than their mere physical value. Where, over a considerable period of years, those properties have yielded a return upon the investment that is more than the usual interest rate, it must be recognized that those properties, because they have an earning capacity greater than the ordinary, must be accorded a value greater than their physical value. In such cases, where the rates under which their earnings are obtained are not in question, the value of the properties would be what you are accustomed to think them to be, the economic value.

Without any attempt to make a contention that there must be a minimum value, it must also be apparent that any road that is doing a great volume of business, even though in the past under regulation which has really been in an embryonic state—regulators have to learn just as great business organizations have to be developed—that, when this investigation is completed by the Interstate Commerce Commission, they will have at hand the information that will, I think, give the answer to what is called the present railroad problem.

This work of the Commission is probably the greatest economic task ever undertaken. It has been under way now for a little more than six years. It has cost over sixty millions of dollars. The mere inventory work will, according to the director in charge, be completed by the end of 1921. The Commission has refrained from attempting to determine the principles of valuation of this class of property until its work can be further advanced and until the Commission shall have before it some of the representative types of property. It has scheduled a hearing in January next for argument upon the subject. At that time, there will be presented to it the views that I have just expressed to you and which, if they should be successful before the Commission, will, I am sure, be a full measure of protection to your investments.

## RECONSTRUCTION OF RAILROAD CREDIT

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**I**N discussing the railroad problem from the standpoint of credit, some facts are so obvious that they need only be stated. It may be safely assumed, for instance, that a permanent and satisfactory solution of the problem requires that railroads generally be placed in a position to meet the transportation needs of the communities which they serve; that the development and growth of the country will necessitate the raising of large amounts of capital to be expended for new tracks, terminals and equipment; that railroad earnings must be adequate to assure the maintenance of satisfactory credit and that issues of new securities must have a broad and ready market. It may be assumed also that large corporations will be better known in the financial markets, where large amounts of capital are available, than small corporations which in most instances will be but little known outside the localities in which they operate; that the larger corporations will have an advantage over the smaller corporations in raising new capital even though each, in its financial showing, measures up to the same standard of credit.

As the railroad problem is primarily a problem of finance, its solution must be sought along lines which recognize the need for corporations of sound credit and for corporations also with ability to raise new capital both readily and economically.

The critical condition of all railroad credit for a long time before the government assumed control of the transportation systems of the country is too well known to require extended comment. It is well understood that even the credit of the roads which were favorably located, well managed, and conservatively capitalized, had become greatly depreciated primarily because the margin of earnings required to protect dividend payments had become so small that discontinuance of payments at former rates at least seemed possible if not probable in many instances.

It is also understood that the credit of other roads was weak and uncertain because of over-capitalization, and in some cases even though capitalization was not excessive the amount of stock was too small and the amount of bonds and other obligations

was too large. Even had rates been sufficient to provide an adequate return on a fair and reasonable amount of capital, the disproportionate amount of stock to bonds and other obligations would still have left these railroads without sufficient credit to obtain capital on satisfactory and economical terms.

The credit of other railroads failed because of the unfavorable character of the territory served and the impossibility of making rates with a view to the special conditions under which they operated.

With the return of railroads to private management similar conditions will prevail unless corrected by remedial legislation. All of these situations must be dealt with adequately and comprehensively if the railroads generally are to have sound credit and are to be made self-sustaining.

For the purpose of determining the relative number and importance of the railroads whose credit has been affected by the several conditions outlined above, the railroads of the country have been divided into three groups.

The first contains the larger railroads which for many years have paid regular dividends. In this group are included 32 systems with a total gross operating income amounting to approximately 60 per cent. of the gross operating income of all the railroads in the United States.

The second group contains the larger non-dividend-paying roads. In this group are all of the railroads with a gross operating income of upwards of \$10,000,000 each, few of which have paid any dividends in recent years. It includes 24 systems with a total gross operating income amounting to approximately 30 per cent. of the aggregate earnings of the railroads of the United States.

The third group contains the remaining systems, the small roads. It includes approximately 100 Class I roads with earnings of less than \$10,000,000, and it also includes upwards of 250 Class II roads with earnings of less than \$1,000,000 and more than \$100,000. The group is made up of more than 350 individual roads but the aggregate gross operating income is only 10 per cent. of the total of the country.

As the dividend-paying railroads in the first group have demonstrated their ability to compete with each other under the same rates, it is fair to assume that the credit of these roads would be restored if rates were adequate to provide a satisfactory margin

over dividends, and, if investors had confidence that rates would be permanently maintained on such a basis.

A comparison of the statistics relating to the operation of the dividend-paying roads in the first group with the non-dividend-paying roads in the second, covering what is called the "test period"—the three years ending June 30, 1917—clearly indicates that the average traffic conditions are much the same in each case. The business is made up of substantially the same proportion of passenger and freight traffic. There is a similarity of tonnage, products of mines, forests, agriculture, manufactures, and other commodities representing about the same proportionate part of the total. The rate per ton per mile and the rate per passenger per mile are approximately the same. With maintenance adjusted to a uniform basis the cost of operation is relatively the same. Inasmuch as a similar volume of traffic handled at the same rates produces substantially the same operating income, it may be assumed that the plant facilities—track, equipment, and terminals—required to handle the business are likewise much alike in quantity and character. In view of the fact that the cost of operation is not materially different in the two cases—if the capitalization were proportionate to earnings—the return on capital would necessarily be substantially the same. It may be said further that the relative value of individual properties arrived at by using the market value of securities, under normal conditions, will be found to approximate very closely results obtained by capitalizing earnings.

In the absence of definite information in regard to the value of the railroads of the country a valuation based on earnings or market value of securities, where traffic conditions are similar, appears to offer a better gauge of the relative value of individual properties than the property investment accounts of these companies, even though the aggregate of these accounts may be accepted as representing the best basis of value for the railroads considered collectively for rate making purposes.

The average conditions under which the railroads in these two groups operate are substantially alike; from a traffic standpoint neither group is "more favorably situated" or "less favorably situated." The difference is largely the amount and form of capitalization, and this difference is reflected in the statistics, especially those relating to fixed charges and dividend payments. Using, for example, figures which cover the Western and South-

ern districts only, the railroads in the first group required on an average a sum equivalent to approximately 23 per cent. of gross earnings to pay fixed charges and to maintain dividends. This total was apportioned approximately 12 per cent. for fixed charges and 11 per cent. for dividends. The railroads in the second group, on the other hand, while paying out substantially the same proportionate part of gross earnings for fixed charges and dividends—the sum being equal to 22 per cent.—nevertheless, required 21 per cent. for fixed charges leaving only 1 per cent. for dividends.

For the purpose of illustration, these statements have been reduced to figures in a comparison of the dividend-paying and non-dividend-paying roads in the Western and Southern districts. The roads in the Eastern district are not included, but similar comparisons produce similar results.

*Per Cent Which Roads in This Comparison Bear to Whole in  
Southern and Western Districts*

	<i>Per Cent. Mileage</i>	<i>Per Cent. Gross Earnings</i>
Group 1.....	58.8	63.5
Group 2.....	29.5	27
Total of Groups 1 and 2 .....	88.3	90.5

*Per Cent. Gross Operating Income Distributed*

	<i>Group 1 (16 roads)</i>	<i>Group 2 (16 roads)</i>
Operating Expenses and Taxes.....	41.9	44.5
Maintenance (Adjusted to uniform basis).....	28.3	28.3
Net Earnings .....	29.8	27.2
Other Income .....	1.5*	1.5
Total Net Earnings.....	31.3	28.7
Fixed Charges.....	12.3	20.8
Dividends .....	10.5	1.1
Total Fixed Charges and Dividends .....	28.8*	21.9
Surplus .....	8.5	6.8

\*Allowance has been made for the difference in receipts from outside income by reducing the amount of outside income of the Group 1 roads from 6.2 to 1.5 to compare with the amount received by the Group 2 roads and deducting a corresponding amount from the amount of charges and dividends proportionally divided between the two.

*Per Cent. of Gross Revenue*

Passenger Revenue.....	21.3	20.9
Freight Revenue.....	69.5	69.3
Miscellaneous Revenue.....	9.2	9.8
Passenger Rate per Mile.....	\$0.02040	\$0.02280
Freight Rate per Mile.....	\$0.00806	\$0.00840
Tons per Train.....	503	413
Gross Earnings per Mile.....	\$11,309	\$ 9,591

*Classification of Tonnage*

	<i>Per cent.</i>	<i>Per cent.</i>
Agriculture .....	20	17.1
Animals .....	4	3.4
Mines .....	39.8	39.4
Forests .....	14.5	16
Manufactures .....	14.3	17
Miscellaneous Commodities.....	2.2	2.5
L. C. L. Goods.....	5.2	4.6
	<hr/>	<hr/>
	100.0	100.0

Figures for operation cover test period, July 1, 1914 to June 30, 1917.

Figures for tonnage cover year ending June 30, 1916.

As the railroads in the two groups operating under the same rates, with a valuation or capitalization based on earnings, would earn substantially the same return on their investment or capitalization, each would be entitled to the same credit, if the capitalization were similarly divided between stocks and obligations. With adequate rates and some adjustment of capitalization on the part of the railroads in the second group, the credit of the railroads representing approximately 90 per cent. of the railroad business of the country would be placed on the same credit basis and on such a basis that the securities of the larger systems would command the confidence of and be attractive to investors.

To establish the credit of upwards of 350 small roads by any method of rate making presents a difficult if not impossible problem, if the roads are to continue to operate independently. These roads for the most part are at a disadvantage from a traffic standpoint with the larger systems and may be termed properly "less advantageously situated." They occupy a less

favorable field for operation and yet are obliged to handle their business on a basis of rates made more largely with a view to the conditions surrounding the more favorably situated roads. Attention has frequently been called to the fact that rates cannot be made with a view to the specific conditions surrounding the less favorably situated railroads which represent but a small part of the transportation systems of the country without providing too generous a return for the large majority of roads which are more favorably situated. This has frequently been referred to as the problem of the "weak" and "strong" roads and the different methods of meeting this difficulty have been an essential feature of most of the plans which have undertaken to deal with the railroad problem. It may be said further that even if rates could be made which would enable these small companies to make a satisfactory financial showing, their securities would have such a narrow market that financing would be difficult and expensive, if not impossible in many cases.

The proposal made in some of the plans—and this has met with some favor—to make advances to weak roads from a fund accumulated from the surplus earnings of the more favorably situated systems, is in itself an acknowledgment that these roads are not expected to be placed in a position to maintain themselves in independent operation.

The most practical plan which has been suggested for taking care of these roads in such a way that the territory which they serve will be assured of adequate railroad facilities is by merging the smaller with the larger systems with which they have natural traffic relations.

Consolidation with the strong systems may also provide the surest and most effective way of meeting the problem of the roads whose credit is poor because of the form of their capitalization. Consolidations would facilitate the reorganization and adjustment of the capitalization of these companies and put them in a position to obtain the capital necessary to meet the requirements of the territories which they serve. It may be assumed that these mergers would take place on a basis which would represent fair relative values and in the process of consolidation capitalization would be so adjusted that the credit of the strong systems would not be impaired.

A brief statement covering the number of existing railroad systems which operate independently will show that a substantial

part of the railroad business of the country is already concentrated within a relatively few systems and if the existing large systems were used as a basis for such further consolidations as might be desired, the result would be accomplished without seriously disturbing present relations. The railroads of the United States have been classified by the Interstate Commerce Commission as Class I and Class II roads. The Class I roads include all the railroads, 177 in number, whose gross operating income equals or exceeds \$1,000,000 annually. The roads represent approximately 97 per cent. of the railroad business of the country. The Class II roads include all the railroads whose gross operating income is over \$100,000 but less than \$1,000,000, and while larger in number, they represent only 3 per cent of the business. Eighty-seven of the 177 Class I roads are controlled through stock ownership by 45 systems. The earnings of the 45 systems, together with the earnings of the controlled roads, amount to \$3,210,256,842, or 96 per cent. of the total earnings of the Class I roads, and 92.8 per cent. of the mileage.

The problem of further consolidation would thus narrow down to the means of absorbing the numerous small systems and such further mergers as might be desirable and necessary among the 45 systems.

A careful consideration of all the circumstances which are involved in meeting the large financial requirements of the railroads leads to the conclusion that railroad credit as a whole will be established on a safer and more satisfactory basis, and capital will be made more certainly available and at less cost, by consolidating existing railroad companies into a few large competing systems along the lines proposed by the Cummins Bill. This method has received the endorsement of the Transportation Conference representing the United States Chamber of Commerce, and the principle was approved by the Counsel of the Association of Railway Executives in his testimony before the House Committee on Interstate and Foreign Commerce.

A policy of railroad consolidation along these lines is not a new policy; it is a policy consistent with the practices which have been followed in developing the transportation systems of the country to their present form. All the large railroad systems represent the merging of many railroads, some strong and some weak, with the result that these systems represent average conditions and, where they compete in the same territory, show aver-

age operating results. The consolidations which have taken place in the past, for the most part, have been an advantage to all interests concerned. By this means railroad service has been extended and improved and financing has been more economical than if the various railroads constituting these systems had remained in independent operation and each had been obliged to finance its own requirements. Whatever difference of opinion there may be as to methods, no plan will prove a success which does not further strengthen the credit of the strong roads, and establish credit for the roads heretofore weak financially, whether the weakness is the outcome of unfavorable operating conditions or a failure to observe sound standards of capitalization. On no other basis will the railroads individually and as a whole be able to meet the requirements of the country for adequate transportation.

## PENDING CONGRESSIONAL LEGISLATION AS AFFECTING OWNERS OF RAILROAD SECURITIES

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ON November 12th a statement appeared in the press signed by the chief executives of organizations of railroad workers, including three of the four principal brotherhoods. This statement, in denouncing the labor clauses of the Esch Bill, characterized it as a "conscienceless betrayal of the public interest;" that "it validates twenty billion dollars of railroad securities, at least eight billions of which is water;" that it caters to "Big Business" and that generally the measure is "vicious."

The statement continued: "This travesty on legislation reveals the fundamental weakness of all schemes to return the roads to their former owners. The fact is that private ownership of the means of transportation has broken down. . . ." That "apparently our statesmanship is as bankrupt as our railroads. . . ." That "the railroads should be held under federal control for at least two years," and in respect to government ownership it said that "labor is willing to accept the sober judgment of the American voters as expressed at a general election."

### *Esch Bill Stripped of Revenue Provision*

Since this statement was made, the Esch Bill has passed the House stripped of the provision which the Committee of the House that framed the bill thought would enable rates to be made which would ensure sufficient revenue properly to operate the railroads. The defeated section read thus:

"In reaching its conclusions as to the justness and reasonableness of any rate, fare, charge, classification, regulation, or practice, the Commission shall take into consideration the interest of the public and the shippers, the reasonable cost of maintenance and operation (including the wages of labor, depreciation, and taxes) and a fair return upon the value of the property used or held for the service of transportation."

Under the bill as amended and passed the inefficient rate laws

stand as at present constituted, with the wage dispute adjustment provision incorporated therein demanded by the chief executives of the brotherhoods.

The failure of a rate-making formula to pass the House substantiates our contention that the Act should *definitely* interpret what a "reasonable" rate means by naming the minimum and provide for a maximum return from such rates, as the only practical legislative solution of the railroad problem. Definite directions in the act in respect to these essentials are as necessary to satisfy the demands of the public, the apprehensions of the shippers and the caution of Congress as it is to be certain that the railroads will be enabled to give adequate service, as a whole, and finance themselves. To state that rates shall be made that will "produce reasonable return" adds nothing to the bill or to the present law that has not been considered by the Commission in the past in making rates as pointed out by Commissioner Clark at a hearing before the House Committee.

The specific charge in respect to railroad securities made in the statement by the organization of railroad workers referred to requires answer. The charge is that the Esch Bill (before amendment), clearly meaning any legislation giving financial protection, "validates approximately twenty billion dollars of railroad securities, at least eight billions of which is water, and directs the Interstate Commerce Commission to tax the American people through an increase in freight and passenger rates to pay dividends on those 'shadow dollars.'"

Any such characterization of railway value is untrue and is but one of many evidences of a deliberate determination by violent terms and action to attempt to coerce and demoralize Congress so that no constructive railroad legislation shall pass. By these irresponsible representations as to values and denouncement of the Congress where they say "statesmanship is as bankrupt as our railroads," and by abusive criticism of proposed legislation inconsistent with their own, those issuing the statement have apparently succeeded in defeating the meagre financial provisions in the Esch Bill, and hope to destroy the enterprise which employ the men they purport to represent in order that they may gain its possession.

The reckless charges in respect to the value of the securities of the railroads are but a repetition of similar misstatements in connection with railroad legislation which for months has been

before committees of both the Senate and the House of Representatives.

*Property Accounts Represent Less Than Aggregate Value*

The property investment accounts of the railroads have been under the close supervision of the Interstate Commerce Commission only since 1907, yet within the short intervening period of twelve years the records show that more than six billion dollars of cash expenditure has been made on the properties of Class I railroads, over one-third of the seventeen and a half billion dollars total property book value of these roads, exclusive of inter-company securities (as of the test period 1915-16-17). I am speaking of property value not security values or issues. No well-informed person will contest the statement that *in the aggregate* the properties and equipment devoted to the public use of Class I railroads (89 per cent of the total mileage) are worth more in the aggregate than the seventeen and a half billion dollars, as shown by the books of the railroads.

But whether this be true or not true, the billions of alleged "water" and "shadow dollars" are effectually provided against in Section 6 of the Cummins Bill, now awaiting action by the Senate.

The importance of the provisions of this section of the Cummins Bill as the minimum essential to the continuance of the development and prosperity of the country cannot be too strongly urged upon Congress, upon the shipping interests and the public. It now stands alone between a successful transportation system privately owned and operated, and a government system, how operated you cannot know.

*Fair Value of Railroads Taken as Basis for Return*

The effect of Section 6 of the Cummins Bill is to provide that, pending actual physical valuations of all railroad properties, the Interstate Commerce Commission, taking into consideration all the elements that should properly be considered, shall determine the "fair value" of the property and equipment of the railroads, in the aggregate, in each rate group. For the purpose of determining and adjusting rates so that they will yield a living and fair return, the Commission shall group the roads (as they have done in the past for a similar purpose) into as many groups as they may decide. Upon the aggregate amount of the investment in or "fair value" of all the railroads of each group a

level of rates shall be established that will yield "as nearly as may be"  $5\frac{1}{2}$  per cent. on this aggregate value, plus one-half of 1 per cent. at the discretion of the Commission, for unproductive improvements, which in the case of those roads earning over 6 per cent. on value determined as stated—not on securities—shall not be capitalized for future rate making.

Earnings that may be made by any railroad in excess of the 6 per cent. (on value) and up to 7 per cent. are divided one-half to the railroad earning them as incentive, the other half to be used as a national fund administered by a government authority in the interest of transportation as a whole, for joint terminals and other joint facilities, or for cars and equipment to be leased to roads to relieve congestion, but not to be capitalized in future rate making. Thus there is a division of excess earnings beyond the given reasonable return on "fair value," between those who use the railroads and those who own them. The one-half of the excess which goes to the road earning it is credited to a reserve account to be used, under specific conditions, to enable it to meet financial obligations and in lean years to provide against deficiencies which might impair its obligations to the public. After 7 per cent. is earned by any road the ratio of division becomes one-third to the railroad earning it and two-thirds to the transportation fund.

*Section 6, Cummins Bill, Provides Against So-called  
"Watered Securities"*

Under Section 6 of the Cummins Bill, *the aggregate* value of the roads of the respective groups is taken. Rates are based on such value, without respect to the amount of securities which may have been issued by any railroad. Since the public and shipper would pay only a reasonable return on the value of each group of railroads as determined by public authority and get back part of what they pay to maintain transportation as a whole, in the use of the facilities purchased from the general transportation fund created from excess earnings, the misrepresentations that have been made and the clamor of the past that the public pays returns on false investment would end. If this section of the Cummins Bill becomes the law, the idle talk about paying or earning "dividends" or a return on "watered securities" and "shadow dollars" will cease and private ownership and operation will be permanently established.

Many railroads will not earn as much as the  $5\frac{1}{2}$  or 6 per cent. on their *individual* property and equipment which would go to make up part of the aggregate of the railroad property in their respective groups. Rates being made on the *aggregate value of all* the property of a *group*, each railroad earns on its *own value* as much as it can secure through efficiency in operation and management. So a railroad that is overcapitalized in securities suffers in the percentage return it would receive on *such securities* because the return is based on the "fair value" of its *property and equipment*. No greater incentive could be given to each railroad than to require that its earnings from rates made on the aggregate value of *all*, shall depend entirely upon its own efficiency, and not upon a guaranteed *amount* to each or a government guarantee *security*. Those roads that earn over 6 per cent. on the value of their property have the incentive to make the earnings in excess thereof as great as possible, because they retain one-half of such excess between 6 and 7 per cent. and one-third after 7 per cent. So there is no *guarantee* of any description, directly or indirectly, given. Rates are made that would yield the stated return on the value of the transportation system *as a whole* and no two roads will necessarily receive the *same percentage* return, because each earns on its *own value* what it can from rates made for *all*, the leveling is accomplished through the regulation of earnings in excess of the percentage return.

#### *Director-General Hines' Prediction*

The Esch Bill now passed by the House does not contain, nor did the unamended bill contain, any permanent financial provision for the railroads. It does not nor did the original bill provide for the regulation of excess earnings, essential to produce a uniformly efficient service throughout our transportation system. Such regulation becomes necessary because railroads that serve dense traffic territory can earn more from a rate than those serving sparsely settled territory, and the latter constitute the majority of the railroads (Class I). You cannot make rates that will suit all the railroads alike. A rate level that will enable the great majority of railroads to live must necessarily produce more earnings to roads serving dense traffic territory than such roads are entitled to have and more than they would receive but for the necessities of the majority. The Commission in the past has hesitated to allow rates that will give to a few favorably situated

roads inordinate earnings which the shippers and public served by these roads have repeatedly declared they will not stand for. Yet such a result is unavoidable under present laws if regard is to be had for the life of the majority which constitute those roads not so favorably situated as the few. The result has been that the Commission could not make rates that were necessary to the majority, so the railroads and the public have both suffered the consequences. Should this continue? If it does, Director-General Hines' prediction will come true when he said that—

The plan of private management necessarily involves the idea that if one or many railroad companies happen to be exceptionally prosperous, the entire exceptional profits remain with the railroad company. This condition, continues Mr. Hines, *will make the public always fear or suspect that it is being exploited through the transportation service for the benefit of private capital* and will lead to continual insistence upon the railroads being operated exclusively for the public benefit *through government ownership and operation.*

Mr. Hines recognized the necessity of excess earnings regulation.

*Crux of Railroad Problem Solved by Section 6, Cummins Bill*

At a hearing before the House Committee which framed the Esch Bill, in reply to a member of the Committee who after repeating substantially the provision relating to rates *then in the proposed bill*, whether such provision would change the past methods of the Commission for making rates, Commissioner Clark, a member of the Interstate Commerce Commission and Chairman of their Legislative Committee, stated that "it would not change it in substance, *because all of those things are now considered.*" In like manner, Commissioner Clark, when questioned upon the advisability of providing in the act a fixed percentage return on value ascertained by public authority which, as we have shown, carries with it regulation of excess earnings, stated, "*it would avoid endless controversies (and) it would put an end to interminable discussion and argument.*"

There is no higher type of man than the men who occupy responsible positions in the service of the railroads. From the locomotive engineer to the man who walks the track I do not believe one of them if fully informed would look for fairer protection to themselves and the public than is provided by Section 6 of the Cummins Bill. Shippers and the public are vitally concerned in this section, for unless adequate revenue is provided

for the railroads, now only to be had through definite requirements of a fixed return with a division and regulation of earnings in excess thereof substantially as Section 6 provides, their railroad service will break down, for another opportunity will not be afforded them for securing constructive legislation, and Government ownership will be forced upon them.

Whether all the existing railroads shall be ultimately forced to consolidate into twenty-five or thirty-five or two or three larger companies, or whether consolidations are made permissive (which we favor), it will require years of valuation, bargaining, and litigation in the case of the former, and considerable time in the case of the latter, so this is not the immediate issue. The crux of this problem lies in whether the principles laid down in Section 6 of the Cummins Bill are to be enacted into law as the only means to save the railroads on the termination of the proposed six months' extension of the standard return; or whether they shall be turned back to their owners loaded with debt, many of them, their traffic disrupted as the consequence of the necessary unification plans of the government incident to the war, with nothing to rely upon but the same regulating laws and procedure of the past, nothing definite upon which they can depend. Any legislation embodying substantially what is now on the statute books, though it may contain added verbiage, will fail unless it empowers the Commission to adjust rates through the regulation of excess earnings of a comparatively few railroads, and to a fair and reasonably fixed initial return to all.

Section 6 of the Cummins Bill is a constructive step in recognizing that the impossible conditions which existed in the past between the shipper and the carrier must be stopped that the business of transportation may be carried on in a business fashion. The mandate by Congress to the Commission comes as near producing an automatic adjustment of rates as possible, and will avoid the "endless controversies" (and) "interminable discussion," as characterized by Commissioner Clark.

*Securities Association Largest Organized Group of  
Owners in Existence*

\* The National Association of Owners of Railroad Securities represents the largest single organized group of railroad securities in existence. They come nearer as an active force being the owners of the railroads than any other single organization. It

is not unreasonable for some of them at least to think that they should be listened to in respect to legislation by the operating heads of railroads that have sold them the securities they own, particularly when such legislation is financial. They find themselves opposed by a few executives who, in the name of their Executives Association, beginning with opposition to our efforts in securing adequate protective clauses in the standard form of government contract when the roads were taken over, are now in open hostility to the one thing the Securities Association chiefly stands for, namely, the principles involved in Section 6 of the Cummins Bill. The owners of the great majority of the outstanding securities of all the railroads find themselves in the unfortunate position of being called upon, through this Association, to defend their securities from attacks, when they had at least the right to expect that the presidents of the railroads that issued such securities should cooperate to secure the legislation the owners believe to be necessary. But these few executives in the name of and exerting the influence of their "Association of Railway Executives," though many executives of the member roads are not in sympathy with such action, are attempting to defeat the purposes of Section 6 of the Cummins Bill, the only constructive railroad legislation offered in years, and thereby find themselves unable to offer assistance. Their campaign in some instances is as misleading as that of the framers of the statement attacking the Esch Bill, and they are lending them assistance in establishing conditions which will not only work injury to those they are supposed to represent, but will eventually lead to government ownership. Their attitude is illustrated in a letter (among others received) from one of the prominent railroad presidents of the country. He asserts that the Executives Association is "dominated by certain interests who are largely responsible for the past and present difficulties of the railroads. In the present instance the Bourbons are running to form."

The Association believed the time had come when all that could be expected is a fair initial return with sufficient in addition above that return to preserve the incentive essential to efficient service. Inherent traffic and territorial difficulties demanded that the regulation of these properties must extend to the earnings in excess of this fair return. In the light of the experience of the past, we wish to see an end put to the "interminable discussions" as to rates that have occurred in the past before

the Commission, and the owners of the railroads should be willing to make sacrifices to secure it.

### *Dangers in the Situation*

Millions of citizens, depositors in mutual savings banks and owners of policies in the great mutual life insurance companies, are represented through their companies as members, as are also those represented by investing institutions generally, all owning vast amounts of railroad securities and are vitally concerned in the pending legislation.

The propaganda being spread throughout the country aimed at the defeat of all railroad legislation, unless a partnership is created by Act between the brotherhoods and the government under government ownership, means that all the political force they can muster will be used against members of Congress who decline to accede to their demands.

Representatives in legislative bodies should be brought to feel that they are not to be left to be beaten because, without fear or favor, they fulfill their obligations of office. Unless these conditions are recognized our institutions will be seriously impaired. There is every indication that the public expects to see the railroad problem solved and settled permanently. Anything less than the requirements of Section 6 of the Cummins Bill will not meet their expectations.

The rank and file of the employees of the railroads, when made conversant with actual conditions, cannot sanction the methods being used to defeat constructive legislation which will solve the railroad problem, with due regard for all interests and classes. The rank and file should know that in the division of excess earnings our original proposal was that any excess over the fixed initial return should be divided one-third to the railroad earning such excess, one-third to a fund in the interest of railroad employees and one-third to the national fund created to be spent in the interest of transportation. The Brotherhood chiefs opposed this, they did not favor the employees having a participation in earnings under private ownership. So this was abandoned.

The time has arrived when the trustees of those representing the great mutual investing institutions should have their dependents know the extent to which this propaganda and these purposes have reached, and what it means to the thirty-three million holders of life insurance policies, to the millions of depositors in

savings banks, to individual investors and others. We live under a partisan political government, and unless those who represent these millions of owners meet the situation by giving support to those public servants who strive to do their duty, a small minority of the electorate, through the propaganda now being spread throughout the country, will bring about the destruction not alone of the rights of property, but the very foundation of our Government.

## THE PRICE OF PRIVATE OWNERSHIP

PIERPONT V. DAVIS

Vice-President National City Company of New York

**A**BOUT ten days ago the organization with which I am connected offered a million and a half of the ten year 6% bonds of a strong industrial corporation. In less than one hour the issue was absorbed and we had orders which we could not fill for another million. Last July a syndicate in which we joined offered an issue of ten year 6% obligations of one of the few railroad companies which has prospered during Federal control. After five months' effort the bonds are not yet entirely sold, while the price has fallen below that which the railroad company itself secured. On the first day of November an absolute first mortgage railroad bond, generally conceded to be perfectly good, matured and yet was not paid off in cash but was forcibly extended for three years because of the bankers' conviction that investors would not purchase at this time a re-funding issue.

Is it not something of an anomaly that a 5% railroad stock, such as the New York Central, which has paid dividends for 50 years, should sell at a discount of 25 per cent. at the same time that an industrial stock like Baldwin Locomotive, receiving no dividends, sold at a premium of 50 per cent.; and when an 8% industrial, Underwood Typewriter, sells at 180, and a 7% rail, Great Northern, sells at 85?

From my knowledge of the bond market, I believe that owing to the present attitude of the investor, the successful flotation of new issues is impossible to all but a very limited number of railway companies. This preference on the part of investors for the securities of industries not subject to public regulation is one of the most pronounced characteristics of the market at the present time.

Opinions differ as to the causes of this discrimination. It has been alleged that the depreciation of railroad credit has been caused by statements made by railroad executives themselves and that the Interstate Commerce Commission has no responsibility therefor. To believe this is to confuse cause and effect. I do

not think railroad credit has been talked down any more than I believe we can talk it up now. A railroad company's performances outweigh a railway president's speeches when credit is in the balance. There is nothing artificial in the deterioration of railroad credit. It reflects the insufficiency of net revenues.

In the ten years ending in 1910 the carriers of the country earned an average of 5.25 per cent. on their investment. Only in the post-panic years 1904 and 1908 did the return sink below 5 per cent. With the exception of 1908, very little mileage was in the hands of receivers. The willingness of investors to purchase more than one and a half billion of new railroad stocks at par, or higher is striking evidence of the public confidence then prevailing. With the adverse rate decision of 1910 confidence began to wane. In the next five years the return on railway investment averaged only  $4\frac{1}{2}$  per cent. and during 1914 and 1915 was very little better than 4 per cent. Few partnership risks were accepted by investors in this period and many thousand miles of road were operated by receivers. After 1915 came the rapid increase in traffic, making the results of 1916 and 1917 unusually good. But investors, realizing that those earnings were due to war conditions, properly enough, had little faith in their continuance. So while it is true that the rentals which the companies are guaranteed under Federal control are based on the highest average earnings ever received in any three-year period, railroad credit is not responsive; the distrust created by the low level of earnings in the pre-war years cannot be expunged by two years of good earnings since they resulted from an abnormal state of trade.

But  $4\frac{1}{2}$  per cent. represents affluence in comparison with the present earnings of the carriers. Were the Government to return the properties to their owners today without making provision for an extension of the Federal guarantees, or for an increase in rates, over 87,000 miles of railroad would presumably pass into the hands of receivers since these roads are not now earning their fixed charges. Nearly seven billions of capitalization would be involved in the crash. The dividend distribution on the stocks of other companies, aggregating one billion, one hundred million dollars, would forthwith be reduced or passed. Fortunately, Congress seems fully awake to this danger and is prepared to furnish a bridge, in the form of the extension of the Federal guarantees, until firmer ground is reached.

Another factor has aggravated the difficulties caused by low earning power. Money was much cheaper prior to 1910 than it has been since. The Pennsylvania Railroad Company, for example, borrowed \$100,000,000 in 1915 at about  $3\frac{1}{2}$  per cent. In 1917 it paid  $4\frac{5}{8}$  per cent., and in 1918 approximately  $5\frac{1}{4}$  per cent. Very few companies have borrowed long term funds since 1911 as cheaply as  $4\frac{1}{2}$  per cent., and yet, since the average productivity of the total railway investment was only about  $4\frac{1}{2}$  per cent. between 1911 and 1915, it follows that the owners of the properties were actually penalized for placing new facilities at the public service.

The railroad problem presents many sides, but underlying the whole difficulty is the question of credit. During the history of transportation there have been times when the relations between the railroads and the shipper and between the public and the roads have been none too cordial, but the identity of interests is today well understood. It must not be forgotten, however, that this identity of interests does not exist in the case of the investor. If he is not satisfied with the treatment he receives he will seek other fields. While he has already furnished the money for enormous additions and betterments to the railway plant we want him to supply a great deal more.

It is often said that the railroads need a billion dollars a year; the latest estimate, I observe, is two billions. We will keep our thinking straighter if we say that it is the public which needs these billions put into the railways. Failure to obtain new capital will react more disastrously on the public than it will on the carriers.

How can cordial relations be reestablished between the railroads and the investor? The demand for new capital throughout the world is now, and will be for some years to come, in my judgment, in excess of the supply. Competition for it promises to be so keen that if we expect the railroads to secure their share we must be more than merely just; we must be generous in our treatment of them. This is the first and most important step in reestablishing relations. I believe this can only be effected by assuring the roads net revenues of not less than 6 per cent. on their investment. While an average of  $5\frac{1}{4}$  per cent., as I have already pointed out, met the situation a few years ago, it will not be liberal enough today when we take into consideration the present increased cost of capital, as well as the need of overcoming the hesitation or distrust of the investor. To give the carriers 6 per

cent. would mean the addition to net revenues of slightly more than \$100,000,000 over the average of the test period. Twelve times this sum has been added to the pay of railway employees since the Government assumed control.

It is far easier to injure credit than to restore it, so we must not think that merely a friendly act of legislation is going to heal instantly the injuries that have accumulated in the past nine years. Indeed, some critics believe that credit is injured so mortally that only a government guarantee endorsed on securities will restore it to life. With this view I do not concur. I do not think the investor demands a guarantee but he will expect that those who determine how much his railroad shall receive for what it sells shall also accept responsibility for what it costs to produce it. There have been too many instances of running railroads with bondholders' or shareholders' money. The cost of railroad operation should be paid for by those who use railroad facilities, not by those who built them. If an arbitration results in an award of increased wages it ought to mean increased rates, not decreased dividends.

Senator Cummins fully appreciates that any remedial legislation must tender the investor reasonable security of principal and interest, and an important section of his bill addresses itself to that end. To accomplish this purpose, however, I think certain changes are essential. Its rule of rate making requires the Commission to adjust rates so that the carriers shall earn, as nearly as may be,  $5\frac{1}{2}$  per cent. on the aggregate value of their properties. It should be distinctly encouraging to the investor to have the Interstate Commerce Committee of the Senate agree that some increase in net earnings is not only warranted but necessary. It is my considered opinion, already expressed, that the return should be not less than 6 per cent. Furthermore, such return, until the physical valuations have been completed, ought to be measured, as it always has been, on the property investment accounts.

I am seriously disturbed by the proposal of compulsory consolidations. It will result in seven years of uncertainty, which means more costly and more difficult financing. It will deteriorate the credit of the strong roads and not help the credit of the weak. Inequality of earning power has dictated this proposal, since on a given rate structure one company may have a grossly excessive income while another may be bankrupt. But

the bill intends to correct this inequality by a division of excess earnings. Why then the necessity of compulsory consolidations? I personally cannot conceive of much durable satisfaction from the work of a few experts commissioned to redraw the railway map of the United States.

The next few years will be crucial to the railroads. Their credit needs every fortification. Senator Cummins' Bill requires each carrier to set aside one-half of its earnings between 6 per cent. and 7 per cent. for a reserve fund of its own, the balance reverting to a general contingent fund. I venture to suggest that in the interest of reëstablishing credit there should be no division of excess earnings until each carrier has built up its full individual reserve fund contemplated by the bill, that is, 5 per cent. on the value of its property.

The Esch Bill, as introduced, concerns itself chiefly with improvement in the machinery of regulation. Necessary as such improvements are they will never of themselves restore credit. In the form in which the bill passed, those few features in it that were calculated to encourage the investor have been carefully stricken out.

I wonder how many people realize that this problem of railroad credit is a public question of transcending importance. Failure to reëstablish credit at this juncture means government ownership. The price of private ownership is a fair return on the investment.

"No country," Mr. Acworth warns us, "has ever nationalized its railways as a result of deliberately weighing the respective advantages and disadvantages of public and private ownership." We have reached the parting of the ways. But whatever the decision, it is of far greater moment to the people of the United States than it is to those holding railroad securities.

## ESSENTIALS OF A SOUND POLICY AS TO THE INVESTOR

WILLIAM L. RANSOM,

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the First District

OTHER speakers have presented a wealth of statistical information concerning the railroad problem and the relation of the investor to it. On no other public occasion outside the hearings of the Congressional Committees have the facts of the matter been so comprehensively and clearly brought together. Perhaps the most helpful thing I can undertake at this juncture will be to try to formulate some of the fundamental principles which must be taken into account in all efforts to reach a solution of the present problem.

The future of railways, privately owned and operated under thorough public regulation, depends in large part on the ability of such a regime to command the confidence of the investing public. New capital must be had in larger quantities for new construction and refinancing. The future of the railways is thus deeply involved in the broader and more basic problem of the status of regulated industry in the United States. The operating experience of the railroads during the years immediately preceding the war establishes that more than half a billion dollars of new capital will be needed annually by the American railroads. For a number of years immediately ahead, especially in view of the present price level, the necessary new capital is more likely to exceed than to fall below a billion dollars per year. The railways must keep pace with the life and needs of the public they serve; they must grow or stagnate; growth means new capital; and new capital depends on conditions of investment. You can compel a man to *pay in taxes* the deficits incurred in railway operation or even the principal and interest of loans from the public treasury for new capital for railway and public utility enterprises, but you cannot compel him to *invest* his money in an enterprise compelled to do business under conditions which arouse his distrust and destroy his confidence.

In the industrial world recent events have emphasized the fundamental American principle that in conflicts between employees

and employers in basic industries, the rights and interests of the public are paramount to those of contestants on either side. The right of the great public to be adequately and continuously served is put in the first place. In the field of railway and public-utility service, likewise, there has lately been at work a sharp crystallization of opinion to similar effect—a recognition that above and beyond all efforts to capitalize the social unrest and force a change of ownership, the essential thing is that these vital facilities shall function to maximum efficiency and that injustice shall not be done to those whose abilities have perfected these enterprises and whose monies are serving the public through them.

We have had in the United States nearly ten years of deliberate, well-planned warfare to intimidate investors from furnishing the needed new capital for railway and other public-service projects. In some instances, this crusade has been the by-product of a narrow but zealous view of public rights as to franchise-holding companies; in other cases, it has been the work of men who believed that manifestations of extreme hostility to the owners of these enterprises would be so popular as to lead naturally to political preferment. In many instances, however, the campaign of terrorism and affrightment of investors has been inspired by those who realized that if private funds would not furnish the requisite capital for new construction and new financing, the treasury of the government will of necessity be resorted to, and that the most effective step towards governmental acquisition of all basic utilities would be to force existing properties into the bankruptcy court or upon the bargain counter.

In the debates which have taken place in the National Congress, and in much of the more recent discussion as to the plight of utilities in our states and cities, there has been discernible what may be termed a new realization of the relationship of the investor to the whole problem of public service. If we are to avoid and withstand the wholesale socialization of the railway, light, heat, power and traction enterprises of the country, conditions must be restored which will attract private capital freely, normally and adequately, under proper safeguards and guarantees, again into this important field. Investors and the general public may well grasp the situation and join hands in dealing with it. The insidious campaign which has made private capital unwilling to risk further outlays in the railway and public utility field has had consciously for its objective the compelling of resort to govern-

mental funds instead, and the clubbing of the present owners into willingness to sell outright on a bargain basis. In what I am saying in this regard, I am in no way discussing the merits of the suggestions from time to time made in American cities that a particular utility or utilities, according to the conditions, might be advantageously acquired by the municipality on a basis awarding just compensation to the investors. That is a business question, to be answered in each community according to its local conditions. Public ownership on such a basis may be wise or unwise, but in either event it has no such sinister aspect as the agitation to which I now refer.

In any program of effort to restore conditions under which private capital will again flow naturally and adequately into railway and public utility enterprises, there are, I think, certain fundamentals of policy, which may be briefly stated and commented upon as follows:

(1) *A recognition and enforcement by public authority of the corporate right to earn such a rate of return as will meet operating expenses, enable the system as a whole to be kept in first-class condition, and attract new capital into the enterprise as needed.*

In fixing the rates to be charged by a railway or other public service company, the effect upon the willingness of capital to finance needed new construction is too often lost sight of, in the effort to keep rates as low as possible. A rate which meets operating expenses and yields a return barely beyond the borders of confiscation, may not be *adequate* for the *life* of the enterprise. If the conditions of investment in railways and other public utilities are kept too irksome and hazardous, the cost of new capital becomes too high, and this in turn adds heavily to the costs of operation. The public inflicts harm and expense on itself by failing to deal justly with the investor.

At the present time, private capital may embark in unregulated industries with less risks and fewer embarrassments and earn a larger rate of return than may ever be countenanced in public service enterprises. It is no accident that the security issues of concerns selling candy, automobile tires, and talking-machines, or running "chain stores," have become more popular on the Exchanges than the best of our railroad and public utility issues. New stock of a railroad corporation could hardly be sold at all. To attract private capital into the public service field at all, it

is necessary, first of all, to eliminate or reduce some of the hazards, along lines I shall later mention; but it may also be necessary to revise some of the earlier concepts of what constitutes a fair and adequate rate of return for public service enterprises.

In computing a fair rate of return on investments in this field, an unfounded analogy is too commonly drawn with the statutes regulating the rates of legal interest in the several states, and the conclusion is reached that a rate of return on public utility investment is, perforce, adequate if it approximates the figure at which interest on certain types of loans would become usurious. The need for making the rate of return such as to attract new capital readily, as needed, in the level of prices and economic conditions to which the war has given apparent permanency, is not heeded. Yesterday's 6 per cent return has no drawing power under today's conditions. If 6 per cent was not too high in 1900 or 1913, 10 or 12 per cent is required now. As the Supreme Court of the United States said a few weeks ago:

It is a matter of common knowledge that, owing principally to the world war, the costs of labor and supplies of every kind have greatly advanced. \* \* \* And it is equally well known that annual returns upon capital and enterprise the world over have materially increased, so that what would have been a proper rate of return for capital invested in gas plants and similar public utilities a few years ago, furnishes no safe criterion for the present or for the future.

If our public utility enterprises are to *live* and render a one hundred per cent service to the public, then the governmental authority—legislative, executive and judicial—must recognize and enforce the utilities' right to a rate of return which will draw capital into this field as needed. Reasonable rates must be fixed by public authority, and the companies permitted and encouraged to earn all they can under those rates. Anything else takes away the incentives to good management.

(2) *A cessation of arbitrary legislative interference along lines of fixed, flexible rates, applied within areas or to classes of service uniformly without regard to conditions.*

In whatever public authority undertakes to do respecting the rates of railroads and other public service corporations, the concept of *flexibility* must go hand in hand with *adequacy*. Rates must be readily readjustable for good cause shown—*upward* as readily and courageously as *downward*—whenever the facts warrant. There is no way of "getting something for nothing" from a public-service corporation, over any considerable period of time. The patron must pay for the service; the investor must pay for

it, for the taxpayer must pay for it; or all three must pay in part. Unless someone pays adequately, the service stops. If the patron does not pay adequately, the investor soon "takes his losses" and withdraws, either leaving the taxpayer or the patron to pay the cost or the two to divide it between them. The usual suggestion is that the public treasury shall in some manner furnish the capital and assume the mounting deficits, and the usual experience has been that paying the deficits by taxes makes transportation cost more. You can commandeer new capital by taxation, whether the enterprise is given a fair chance or not, but if you wish voluntary investment of private capital the conditions must be made attractive.

For many years there has been building in this country an elaborate mechanism, State and Federal, for forcing railroad and public utility rates *downward*. This was in a period of *declining* costs of operation per unit of service rendered. Industry has now experienced for five years a period of *rising* costs, and those costs are *still rising*, but the mechanism which availed to force rates *down* has failed dismally, in many of the states, to raise rates flexibly so as to keep revenues adequate and the investor safe. As a means of keeping rates adequate and reasonable in a time of rising costs, the machinery of public control, for the most part, broke down in the emergency. It has failed to protect either the investor or the public. This has been true of the Interstate Commerce Commission and many of the State Commissions alike. Is it surprising that the investor has been affrighted from the field?

The worst aspect of the problem of keeping rates adequate—neither too high nor too low—has proved to be the fixed legislative rate, born of some political exigency and applied without regard for consequences. In many instances, the Legislature has left the situation such that the Commission appointed for the purpose of regulating rates as well as service, has no power to authorize an adequate rate, even when conditions cry out for increase.

The inflexible rate, fixed by legislative act on an arbitrary basis and kept in force regardless of changed conditions, is the terror of the investor and a downright menace to good public-utility service.

(3) *Clarification of the bases of return upon investment, so as to ensure that no theoretic concepts and calculations can impair the investor's right to rates based upon the property invest-*

*ment devoted to the public service, through adherence to any theoretic claim that the quantum of investment in a railroad system or a public utility plant becomes automatically less the longer it serves the public, until it is finally wiped out altogether at the behest of some estimated "table of lives" of detached units.*

Time will not permit, and the present occasion does not warrant, an extended discussion of the questions of law and applied economics involved in the oft-heard claim that property devoted to the public service should be subjected to a "theoretical depreciation" which pares and whittles away, year by year, the investor's outlay and his right to receive a reasonable return upon the whole thereof.

I may, however, express the view that the most effective factor in the whole campaign to intimidate the investor and drive him from the railroad and public-utility field, has been the insidious doctrine of "expiring" investment or property value. In itself it has been, and will remain, sufficient to deter investors from risking new monies in a field subject to such a confiscatory concept, until it is generally rejected. Nevertheless, the statute under which the valuation of railway property has been in progress has been construed to give sanction to this concept.

The idea may be roughly illustrated in this way: Investors lay out \$1,000,000 in building a railroad addition or a public utility plant. They expect a return of 7 per cent or  $7\frac{1}{2}$  per cent thereon, over and above operating expenses and the upkeep of the property, and rates are fixed accordingly. If, after the property has been in operation, such a rate has been charged, and such a return received, for several years, the question of the fixation of new rates by a regulatory commission arises, and the new rates are made such as to yield thereafter a return on a property investment of only \$600,000, and the quantum of investment is fixed accordingly, it is obvious that something has been done by the commission to wipe out and obliterate \$400,000 of investment in the property, and *confiscation* to that extent has taken place in the guise of law. That this is done, in disregard of actualities, on a theoretical estimate that particular units in the property had a "life" of only ten years and that at the end of four years, four-tenths of that "life," and so of the property "value," had "expired," leaving only six-tenths of "life" and "value" "unimpaired," does not alter the consequences to the investor. The result is a progressive destruction of his investment outlay, and he may be

pardoned for preferring a field of enterprise where no such scheme of minimizing his investment is in vogue.

The bases of sound rate-making are, I think, clear, and their practical application needs to be defined and insisted upon. The rate chargeable by a railroad or utility should be adequate:

(1) To defray all operating expenses—the cost of service.

(2) To provide for, as a part of operating costs, the maintaining of the system and property in good condition, furnish renewals and replacements, and cover the diminution of capital account through property withdrawn from service—thus keeping the property in first-class operating condition and the quantum of investment unimpaired.

(3) Over and above these current costs, to yield the investor a reasonable rate of return upon his property investment in the enterprise—his unimpaired investment—so that what he put into the project may remain in it and his right to earn a return upon all of it may continue, in the absence of some ultimate liquidation. Until the investor gets his money back from the enterprise, in some form other than that of the payment to him of the annual return, he must be regarded as entitled to receive a return calculated upon his aggregate outlay—what he is out of pocket because his money is in this enterprise—and no countenance can be given to the concept that his investment is *less* merely because it has continued to serve the public for some years. No man's investment is progressively destroyed by his receiving from year to year a payment representing a return on the investment. Nor does its duration affect its amount adversely. The *principal* of the money he has loaned to the enterprise is not extinguished or pared down by perennial payments of a return thereon. The right to earn a return on the full *quantum* of the investment continues until the investment itself is liquidated or repaid.

Under present-day operating conditions and with the broad powers of the regulatory commissions over plant and equipment, the endeavors of the executives of a railway or public utility enterprise are to maintain it in 100 per cent operating condition, and to make repairs, replacements and renewals whenever advisable to that end. This is done as a current charge out of operating expenses, and the plant is thus continuously renewing itself. Particular parts of units may wear or break; units may become inadequate or obsolete; but *the plant goes on*, and is kept abreast of operating needs, and has virtually the same, and often even

greater, productivity and efficiency, years after its operation began and years after the process of continuing renewal, repair and replacement began. The integrity of the capital investment is thus maintained, and the plant itself is kept physically good to the extent practicable or economically possible. Looking at the plant or railway system at any given time, certain outlays would be found necessary to make the plant or system 100 per cent physically good—things which would be done in the ordinary course of repairs and renewals, and things which it would hardly pay to do, because the conditions to be repaired are so casual and inconsequential as not to detract from operating efficiency. The full investment remains in the property, however, and the investor is entitled to a return upon the full amount thereof until his investment has been repaid him.

In order to feel assured of a square deal, the investor needs to know, with considerable certainty, the capital sum upon which a return will be computed, in any rate-revision by public authority. He needs to know that the company will be allowed to earn a fair rate on the capital put in by him until such time as that capital is returned to him. There is no need now for uncertainty or indefiniteness about these bases of action. For years the railroads and the utilities have been subjected to accounting systems under which outlays are fully recorded, capital accounts are closely scrutinized, units and quantities and prices are known, and authentic data is available for the bases of sound and just action in rate matters.

(4) *A constructive and cooperative attitude respecting the issuance of securities for new construction and re-financing.*

To bring the investor back into the railway and public-utility field with full confidence, there is need for a helpful and non-legalistic attitude on the part of the regulative commissions, in proceedings for authority to issue stocks and bonds for capital purposes, including re-financing. For a number of years, new construction by railways and utilities has been held to a minimum, as a part of a war-time program, and it has been deemed generally impracticable to undertake flotations of securities for any purpose in this field, except where maturing obligations have left no alternative. Needed extensions have been long deferred, and applications for approval of new security issues have all but disappeared from commission calendars. Perhaps as a result of this condition we have lost sight, for a time, of the practical conse-

quences of the course taken by the state authorities in acting upon proposed security issues. The time is at hand, however, when this phase of regulatory power must be squarely faced, because it bears vitally upon the question whether new capital can be had from private sources. The era of "wild-cat" and speculative financiering in the public-service field is far behind us; the day of "watered" or inflated issues of securities by railway and other public-utility corporations is happily past, in nearly all of the states. The issuance of securities by public-service companies, under the authority of state tribunals, during the past decade, has in most instances been preceded by rigorous and minute inquiry to see to it that bona fide capital purposes were represented and that an adequate amount of money or property was received by the companies as consideration therefor. The certification of the security issue by the state commission has been, as it should be, an assurance and protection to the investor; but instances have not been lacking where the attitude of the commission was so exacting and inflexible as to bar the way to businesslike financing or re-financing. The difficulty has been more often one of procedure and of intellectual predisposition than of substance; but the delay, the deterrents, the tendency to do "cheese-paring," and the reluctance to act readily upon the obvious actualities of a business situation, have operated to create oftentimes an atmosphere which the investor prefers to keep out of when he can.

The temper of the times in nowise suggests a return to the days of unregulated issuance of securities. Particularly if the commissions would fulfill their proper responsibility for the allowance of a fair return upon the property investment whose capitalization they sanction, the official scrutiny of security issues would be a great boon and safeguard to the *bona fide* investor. There is, however, need for reason, accommodation, common-sense regard for realities, and a little breadth of view, in the procedural handling of security issues by state tribunals.

The practical needs of the situation may perhaps be pointed by the comment of the Illinois countryman who went to Mr. Lincoln to consult him regarding marital infelicities. After listening to a narrative which covered some twenty years of domesticity, marred often by conflict, Mr. Lincoln ventured the view that the facts stated would hardly sustain a suit for divorce. "Good heavens," replied the prospective client, "I do not want a *divorce*; what I want is a little more freedom on lodge nights!"

(5) *A better adjustment of the relationship between company management and the various instrumentalities of public regulation.*

I do not believe that the investor will be disposed to supply again the new capital for needed facilities of transportation, light, heat and power, except as the relationship between the company management and the various officials and bodies imposing regulatory requirements is brought to a basis better defined and more harmonious. There is need for adjustment and definition, on both sides; mistakes have been made, on both sides; but the present situation leaves the definite feeling that various public agencies have been given drastic powers over both his outlay and his earnings, and that he and his investments are too often torn to tatters in a conflict between the commissions and the company officers, over matters which he does not fully understand, beyond the point that public officers have been vested with a power to do him harm from which the best efforts of directorates and executives cannot altogether protect him.

Regulation of a thorough-going character has come to stay, and the public interest has come to be recognized as a general partner in very public-utility enterprise. No mandates of a regulatory tribunal are required to give to the public interest a voice or a vote in the conduct of the affairs of the average large enterprise of today. Subject to the qualification that men of differing experience may differ widely in their judgments, a real desire to serve the public acceptably is now the rule rather than the exception, and the regulatory tribunals are called upon to review and correct divergencies of judgment rather than perversity of purpose.

In recognizing, however, that public control through suitable agencies is an essential part of any plan of public-utility operation through private enterprise, and that cooperation must be had between company and commission, there is need also for recognition of the delicate and drastic power reposed in the public agency. Power to fix the price charged for the company's product and power to impose requirements which add to the cost of producing the service rendered, involves a far-reaching control, not only over the investor's earnings from the capital he is devoting to the public service, but even over the security and permanency of the investment itself. In ways that attempted enforcement of the constitutional guarantees may not be able to forestall, regulation may inflict a virtual confiscation. So the investor may be pardoned if he is predisposed to be wary about putting more of

his money into enterprises so drastically supervised, at a time when there is such a demand for money in industries subject to no such control over selling-price, security issues, and the property investment itself.

Thus there is plainly a need that the commissions shall be made up of men of the broadest experience and open-mindedness of view, and that they shall be assured tenure, salaries, rank, and status of aloofness from political and financial entanglements, so that their position and qualifications may correspond to those of judges of the highest courts of the state. Furthermore, there is need for a simplification and concentration of supervisory powers. Far too many public officials and bodies are vested with power to affect adversely the earnings and properties of railroads and other utilities. From a score of uncoordinated public instrumentalities come a multitude of directions, adding to the complexity and cost of doing business, and subtracting from the revenues. "Too many cooks" spoil the investment; there is need for a more unified regulation.

For example, if the government requires a utility to pay taxes on a given *quantum* of property investment, it should readily, and at all hazards, secure to the company's investors rates permitting an adequate return on *at least* that quantum of property. Oftentimes the value fixed for tax purposes may fall far below the total property investment on which the company has a right to earn a return, but the spectacle should be ended of *one set* of governmental officers trying to establish the highest possible value for the company's property as that on which the company should pay taxes, and *another* set of officials trying to prove that the same property has little or no value at all in a rate proceeding, and *both* sets of officials, and several others, trying to prevent the company from earning anything at all on either the highest or the lowest value claimed by any of the public authorities.

Again, if the government subjects the finances and operations of a public-service company to a constant and inquisitorial supervision and analysis, in the form of a uniform system of accounts and closely scrutinized reports rendered under penalty, the operating data thus brought together under public scrutiny ought to be recognized as the available basis for official action *in favor of*, as readily as *against*, the company, and those who have required the company to spend much time and money in complying with these regulatory requirements ought not to be permitted to deny the company the benefits of such compliance in good faith.

## WHAT WARREN S. STONE THOUGHT IN 1911

SLASON THOMPSON,

Director Bureau of Railway News and Statistics, Chicago

**I** FIND myself unable to agree with Mr. Warfield in his proposal to confiscate the net operating income of roads earning above six or any other per cent. The earning power of all roads in a given region is taken into consideration in fixing the reasonable and legal rate, and generally the most successful roads have the greatest weight in arriving at that rate. The rate once legally established, the extent of the net return should be left to the efficiency of the management in earning it. If there is to be any diversion of net income from the road earning it, it surely should not be based on a minimum return of six per cent but on fifteen or twenty per cent or some figure beyond which Congress decrees that net profits in any business, railway, banking or otherwise, coming within its purview, are excessive. But under any circumstances I do not believe in robbing Peter to pay Paul, no matter how rich Peter may be nor how poor and deserving Paul may be. As rates come out of the public, the graded income tax for the public chest would seem to be the means of making Peter contribute his share to the common weal.

Will a net return of six per cent, think you, attract new capital to the risks of an industry where the excess over that is subject to seizure for the common good? I trow not.

On the way down here I thought that anything I might have to say at this conference would count little toward the settlement of the vexatious problem confronting the people of the United States, but that words of truth and soberness spoken by Warren S. Stone, Grand Chief of the Brotherhood of Locomotive Engineers, in the calm past might carry more weight now than they did eight years ago. So I brought along a reprint of his speech before the National Civic Federation at its annual meeting in 1911, a few passages from which I wish to submit for your consideration. They need no other introduction.

"Recently," said Mr. Stone, "the papers were filled with the statements made by a new star that had arisen in the labor world. 'The railroads can save a million dollars a day.' Think of it! Three hundred and sixty-five millions a year! When a man

comes forward with such a startling statement as that made by Mr. Brandeis, we commence to look around and ask questions we have a right to ask. Did he ever manage a railroad? No, he never did. Place him in the general manager's chair in charge of one of the great railroad systems, and he would be lost. You would have to put a bell on him to find him. Did he ever design a locomotive, or draft one? No, he never did. Did he ever shovel any coal into one? No, he never did. I have. I have shoveled more coal into locomotives than you could pile on a city block. Mr. Brandeis has had no practical experience, and knows nothing about the subject. Yet only yesterday he stated we could save five hundred thousand dollars a day on fuel alone. No railroad is at the present time throwing away a dollar, and, regardless of Mr. Brandeis' statement to the contrary, the American railroads are the best managed of any in the world. The men in charge of these great systems stand head and shoulders above the railroad men of the world. There is no other class of business that is operated on so close a margin, no other business where the details are watched so closely as on the average railroad. And yet Mr. Brandeis says they can save \$365,000,000 a year. He must have gotten that fairy tale out of some story book. \* \* \*

"The individual shippers of the country are the very ones who reap the benefits of all rebates ever given and cause the present drastic laws for the regulation of interstate traffic to be enacted."

Right there I would like to interject the remark that it seems to me there has been a bewildering confusion of ideas as to shippers and the public. They are two very different interests. The former continually masquerades in the raiment of the latter, especially before the Interstate Commerce Commission, which apparently has never realized the deception. Mr. Stone did when he said:

"In the end, who pays the freight? The most superficial study of the question will prove to any one that the consumer pays the freight. The shipper does not pay a dollar of the freight. He is simply a parasite who lives off the consumer and the producer, one of the middlemen who take their toll and increase the cost of living."

In support of this view I might add that since 1900 there has been remitted in the reduction of rates to the shippers over, or nearly, fourteen billion dollars, not one cent of which has ever reached the consumer. You know that it has not, because you

know that in the meantime everything that the consumer has paid for has gone up.

And then Mr. Stone concluded his remarks with the following summary of the situation, more impressive, even now, than when it was spoken :

"I believe," said he, "that the masters of finance, such as represented by Mr. Morgan and others, are absolutely right when they say they have reached the limit of economy in railroad operation. I don't believe it is possible to do any more along that line, and I agree with them that anything in the future toward improvement will have to be by addition or increase to freight rates. There never was a time in the history of the railroads when so much was demanded as now. There never was a time when so much was demanded along the line of fast traffic, high speed, splendid roadbeds and a thousand and one other things, and there never was a time when the railroads were in need of more money to make improvements, build terminals and other things needed as now, and the only hope for them is in an increased freight rate. What is the result? Today in this country everybody is waiting to see what the Interstate Commerce Commission is going to do in regard to freight rates; business is practically at a standstill; there is a wave of uncertainty in the air; you may say it is all due to the wage movement. It is true we have had increase of wages throughout the country; but that doesn't begin to compensate for the increase in the cost of living during the same time and the same period. The increased cost of wages is not what is causing the increased cost of living at the present time. Every other commodity has had to increase prices except the railroads; everything they had is going up, not only labor, but everything else, and everything the railroads have to sell is going down, and unless there is a change of public opinion in the near future, some of the best managed railroads today will have all they can do to keep their heads above water, and they haven't the money and can't get it for the needed improvements they have to make."

Much water has gone over the dam in the eight years since these candid words were uttered. The Commission denied the relief for which Mr. Stone pleaded, with a few words of *manana* thrown in by Commissioner Lane. The average ton mileage receipts continued to drop from 7.57 mills in 1911 to 7.14 in 1916. The Adamson law added \$200,000,000 to the cost of operation and Mr. McAdoo's Order No. 27 and its supplements \$800,000,000 more, only partly offset by belated increases in fares

and rates. The operating ratio grew from 68.66% in 1911 to over 85% for the nine months ending September 30, 1919, and taxes increased apace. The government took over the railways to win the war, but, with a shrewdness unworthy of a great and just government, included the worst year in the record since 1908 in the test period by which the standard return was reduced fully \$100,000,000.

The situation today calls for an advance of at least thirty per cent in freight rates to meet the increasing wages which the Director General continues to order while refusing to order the increase in rates which he still has the power to grant.

And yet I have sat here and heard the question of what is the matter with the railways discussed from every angle but what I believe to be the correct one: A mandate from Congress to the Interstate Commerce Commission to reverse its traditional attitude toward the railways. The railway situation to-day is the result of the departure of the Commission from the purpose of its creation as announced by Judge Thomas M. Cooley in its first report, when he said: "The Act to Regulate Commerce was not passed to injure any interest but to conserve and protect. It had for its object to regulate a vast business according to the requirements of justice."

If the Commission would rise to the full measure of its vast powers and responsibilities, the railway problem would be solved without its asking for greater powers.

## RAILWAY CREDIT AND THE INTERSTATE COMMERCE COMMISSION

CHARLES WHITING BAKER

Consulting Editor of Engineering News-Record

**I** HOLD no brief for the Interstate Commerce Commission; but as they stand here charged with the responsibility for the collapse of railway credit, some presentation should be made of their side of the case.

As stated by Commissioner Clark in his testimony before the Esch Committee on July 15, 1919, the facts are briefly as follows: Prior to August 28, 1906, the Interstate Commerce Commission had no authority to fix railway rates. In the years from 1900 to 1906 the dividend payments to railway companies varied from \$140,000,000 in 1900 to \$272,000,000 in 1906. Since 1906, with the Commission in control of rates, railway dividends have largely increased. They were \$390,000,000 in 1907 and \$460,000,000 in 1911. The total payments to railway stock and bond holders, which were \$460,000,000 in 1902, were \$870,000,000 in 1911 and \$892,000,000 in 1914. The percentage of railway stock which pays dividends has increased under the Commission's control. In the five years prior to 1905 the percentage of outstanding railway stock paying dividends varied from 46% in 1900 to 57% in 1904. Since 1907 the percentage of railway stock paying dividends has in no year fallen below 60% and reached 67.65% in 1911. Not only this, but the average rate of dividends has increased. In the four years prior to 1904 the average dividend was less than 6%. In no year since 1906 has the average dividend rate been less than 6¼%, and in four of those years the rate was above 7% and in two years above 8%.

Thus, the railway security holders as a whole have fared better in the years since the teeth were put into the Interstate Commerce law than in the years preceding. This is true notwithstanding the many million dollars which holders of railway securities have lost during these latter years through the financial misdeeds in connection with the railway systems of New England, the St. Louis & San Francisco, the Pere Marquette, the Cincinnati, Hamilton & Dayton, and various other companies.

It needs only a reference to these well remembered scandals to make it clear that there are other reasons why investors hesitate to buy railway securities than fear of what the Interstate Commerce Commission may do.

And having said this much in defense of the Commission and in opposition to the campaign of publicity which attempts to make it responsible for the collapse of railway credit, let me say with equal frankness that in my opinion the time is past when Congress can merely toss over to the Commission the responsibility for Government regulation of the railways. The Commission is organized as a judicial body, to enforce legislation. There must be in the Government an efficient executive organization to deal with the railways if our work of railway regulation is not to break down; and it must not break down, if we are to escape outright Government ownership and operation.

# THE HUMAN FACTOR IN THE RAILROAD BUSINESS

HENRY R. SEAGER

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**W**E are going to discuss this morning the really difficult phase of the railroad problem, "The Railroads and Labor."

The impression that we all have received from the meetings held yesterday is, I believe, one of optimism. The situation of the railroads is, to be sure, critical, but the remedy from the viewpoint of the investor is not difficult to discover. It is obviously an adequate increase in railroad rates. That remedy would seem to bear hardly upon the shipper, but as was brought out, without prosperity on the part of our railroads we cannot expect general business prosperity, and if we have general business prosperity then the shipper can easily bear the burden of higher rates. This seems to ignore the fact that at last analysis the public, the consumer, must pay the bills, but as was also pointed out, if our remedy gives us railroad prosperity and general business prosperity then the public must share in the good times and will not mind an added burden in the form of somewhat higher prices—not necessarily much higher prices—as the result of the higher railroad rates.

Altogether this has given us a somewhat cheerful picture of what easily lies before us in connection with the railroad problem. This morning, we take up the aspect which presents elements of friction and dissatisfaction that are not so readily disposed of. We take up the human factor, and as was long ago pointed out by Adam Smith, there is no aspect of economic relations that is so troublesome or where the element of friction is so great as the human aspect.

At the very outset, the phrase which describes the topic for the morning, "The Railroads and Labor," may be objected to because it is too impersonal. By the "railroads" in this connection I take it we mean the human beings who are called upon to administer the railroads—the human factor on the side of management—and by labor we mean the classified employees who operate the railroads under the direction of the management,—the human factor on that side.

Before the war, the relations between management and labor seemed to be fairly satisfactory. The demands that were put forward by the organized workers were the demands that we should expect: demands for higher wages, shorter hours, more satisfactory working conditions. There was no fundamental difference of view between the management and the employees as to what was called for by the best interests of both. The difference of view was a difference of degree as to how high wages could fairly be paid, how short the hours could fairly be made, how favorable the working conditions could be made.

The new spirit engendered by the war and experience of government operation have caused a radical change in the demands of the organized workers. As has been brought out repeatedly at these meetings, the demands now put forward with as great insistence as wage demands were ever put forward in the past, are for government ownership of the railroads, and for the participation of employees in the management of the railroads.

Whether we consider these demands wise or foolish, we should be exceedingly unwise not to recognize the necessity of adopting a policy that pays due regard to them in connection with the reorganization of the railroad industry. For there is nothing more certain than that the successful operation of the railroads in the future will continue to depend, as it has in the past, on the loyal and efficient coöperation of the employees.

It may be possible for Congress to pass legislation which the employees distrust and oppose, and it may be possible to make that legislation effective, but the outcome will not be a solution of the railroad-labor problem. Such a solution will be incomplete and no permanent solution will be achieved until some plan that inspires the confidence and appeals to the loyalty of the employees is worked out.

There are two aspects of the matter that I think impress all of us strongly, looking at the problem from the viewpoint of the public: One is the background of this demand for representation of employees in management. Does it represent a desire on the part of the railroad employees to arrogate to themselves the management of this industry? I do not believe that this can fairly be said. Does it not rather represent, as Mr. Shea brought out last night, distrust of the management based partly on revelations of flagrant manipulation of railroad securities, in some instances in the past, and partly on ignorance? I want to throw

out the thought that even though representation of employees on railroad boards may not contribute greatly to the efficiency of the railroads directly, if indirectly it can serve to give to the rank and file confidence in the management, and information in regard to vital aspects of the problem that confronts the management, it may be of tremendous benefit in increasing the efficiency of railway operation.

The other aspect is that connected with continuous operation of the railroads. Enthusiasm was excited several times during the meetings yesterday by references to the anti-strike provision of the Cummins Bill. The premise on which this provision rests, that is, that we must have uninterrupted operation of our railroads, we all undoubtedly subscribe to. The time is past when we can tolerate any interference with the continuous operation of our railroads, but whether the conclusion which Senator Cummins and his associates draw, that is, that this means anti-strike legislation, making strikes conspiracies and trying to penalize them through the courts, is another matter.

In these questions involving the human factor, the logic of the matter is not always convincing to those who understand the psychology of the situation. We have an illustration in connection with the coal strike. So far as the law is concerned it is substantially the same as would be the law under the Cummins Bill, but is it causing coal to be mined? Even so conservative a paper as the *Times* pointed out the other day that you cannot, through writs of injunction, compel men to mine coal when they do not wish to. Is not the contention of Mr. Shea last night, that if we deprive these railroad employees of the right to strike that is enjoyed by other employees, the necessary corollary of the policy is that we put them in a preferred position as employees; that is, that we work out for their protection what Mr. Shea called an industrial code, including, as he views it, a living wage, the eight-hour day, the guarantee of regular employment during good behavior, and so on. Must we not think of these two things together? If we take away something, must we not reconcile railroad employees to the change by giving them something—giving them something that insures that they shall enjoy the favorable conditions of employment, that in their view they can only be sure of under present conditions by retaining the right to strike?

The bright spot in our railroad situation is, to my mind, the

character of our railroad employees—the character of the men in the brotherhoods, and the character of the men who are managing our railroads.

To a very large extent, our practical railroad managers are men who have come up through every stage of the industry, who understand the psychology of the wage earner, because they themselves have been wage earners, and who also understand the problems of management because they are managers, and who also through their constant contact with boards of directors, understand the financial side of railroad operation.

## PENDING RAILWAY LEGISLATION

TIMOTHY SHEA

Acting President Brotherhood of Locomotive Firemen and Enginemen

I AM very glad, indeed, to be present on this occasion and make a few observations concerning pending railroad legislation now before Congress, known as the Cummins and Esch bills.

At the outset I desire to say that there are always two sides to every question, and in this connection I am frank to admit that capital has rights that must be recognized. On the other hand, I am sure you will agree with me that labor has rights that must not only be recognized but respected.

Capital cannot get along without labor, and, conversely, labor cannot very well get along without capital because out of labor capital and all of the wealth of the country is produced.

The railway labor organizations are opposed to the fundamental basis of both the so-called Cummins and Esch bills. They are unalterably committed to the principle of public ownership and a certain form of public operation. As a consequence, we do not favor any pending railway legislation, however modified its form may be, which has for its object a return to the old conditions of private ownership and operation of the transportation industry. I wish to emphasize this point of view at the outset, so that in discussing special features of the Senate and House bills which are peculiarly objectionable to us, I may not possibly be misunderstood as giving my assent to other parts of these proposals, or of being in accord with the general theory of ownership and operation upon which they are constructed.

### *Anti-Strike Provisions*

With this reservation in mind and considering the bills as they stand, the most objectionable provisions so far as employes are concerned are those in the Cummins bill dealing with labor conditions and relations. The authors of the Cummins bill directly state that they are determined to shackle labor by taking away from it the right to strike. The framers of the Esch bill at first had the same object in view. The labor provisions which they originally proposed were even more vicious than those of the

Senate bill, because they were indirect and subtle. Their effect would have been to disrupt labor organizations, dissipate their resources, absorb their protective funds and render their leadership powerless by making non-compliance with a wage award or finding a legal ground for damages. When this was pointed out to the House, these labor provisions, I am glad to say, were stricken out of the Esch bill. The object which it is hoped to attain by the Cummins bill, however, is identical—the deprivation of labor of its most effective weapon,—the right to strike.

### *A Deliberate Conspiracy*

The anti-strike provisions of the Cummins bill are justified outwardly by the claim that the public welfare must be protected against dislocations and stoppage of transportation facilities. The distinguished Chairman of the Senate Committee, whose name the Senate bill bears, and many others in the Senate, are undoubtedly sincere in this point of view. But they are blinded by sinister interests which lurk invisibly in the background. We, who represent labor, may be unduly suspicious at times, but we pride ourselves in the fact that we have long since become proficient in detecting the hand of Esau when we hear a voice which seems to be the voice of Jacob. And we have found it wise not to forget another Biblical story. You will recall that the prophet Samuel tells that when Joab met Amasa, he said, "Art thou in health, my brother?" and, as was the custom of friendly greeting in those early days, he took Amasa by the beard with the right hand to kiss him. But in an excess of confidence "Amasa took no heed to the sword that was in Joab's hand; so he smote him therewith in the fifth rib" and Amasa died.

We have not the confidence of Amasa and when we look beyond these anti-strike proposals we can see the sword of treachery. The chief executives of the railway labor organizations have become convinced—and their conclusions are based on actual evidence—that the pending anti-strike legislation is the indirect outcome of a conspiracy to reduce the wages of railroad employees below their present inadequate levels. The dominating financial interests in the transportation industry, who, in the background, conspired to bring about this legislation under the dissimulation of protecting the public against railway strikes, have decided that when government control of the transportation industry is terminated, they will reduce the rates of pay of railway

workers and, if strikes result, they will break them by fining or imprisoning the strikers and their leaders. It is the same reasoning and it is the same group who have attempted to continue the enslavement of the iron and steel workers by denying them the right of collective bargaining. These interests are also responsible for the failure of the National Industrial Conference called by President Wilson to function. They are also the fundamental forces against bituminous mine workers and are at the bottom of the conspiracy to exploit both the miners and the consumers of coal. Their object is never altruistic but always sinister. Their purpose is to continue unchecked their war-time profiteering, and the exploitation of wage-earners and the public, in which profitable policy they had been so successful prior to the war. It is unnecessary to say that not only as railway workers, but as free and patriotic citizens in our self-governing American republic, we shall resist this conspiracy to the uttermost. Under no conditions shall we consent to be shackled with legal chains of industrial slavery.

#### *Anti-Strike Legislation Means Involuntary Servitude*

There is no blinking of the fact that the real interest and the vital significance of anti-strike legislation to the railroad employe is involuntary servitude. It will render him powerless in the presence of his most formidable and ruthless adversaries. Not only would his power of defense be lost, but what is of almost equal importance, he would be without strength for an offensive of any description or for the advocacy of a constructive program of any merit. It is strange and incredible, that when we have just made every sacrifice of life and property to destroy political autocracy in Europe, and when we have been encouraged to look forward to a larger measure of industrial democracy, that a policy is formulated and advocated which can mean nothing else than placing railroad workers under the control of autocratic financial and industrial interests.

#### *Theoretically Unsound and Unjust*

The anti-strike provisions of the Senate bill now before the Congress are also theoretically unsound and manifestly inequitable. The Chairman of the Senate Committee in his report accompanying his bill tells the railroad employes that he has provided a series of boards or wage-courts to pass upon their com-

plaints and, as in civil and political life, their differences are justly decided by the courts, so in the transportation world, their complaints will be justly passed upon by the machinery which he has proposed. Such a statement is manifestly unsound however, for the reason that the industrial constitutionalism and judicialism which he proposes to establish cannot be compared with our fundamental political laws or the courts which have been established for their interpretation and application.

The Constitution of the United States and all democratic constitutions contain a code or bill of rights guaranteeing personal and civil liberty to the individual. The courts in their decisions act under the guidance or limitations of these fundamental guarantees. To the individual they are a condition precedent to the acceptance of the constitution itself and to his subordination to the judicial agencies under the constitution. Moreover, all political constitutions provide reasonably prompt means for their own amendment or revision.

But the pending Senate bill provides no means beyond influencing Congress for a change in its labor provisions. Neither does it contain any bill of rights or fundamental guarantees or safeguards to labor. If the right of strike or revolt against industrial conditions is to be denied, every consideration of justice requires that such legislation should be accompanied by an industrial code or bill of industrial rights to labor, such as the right to a living wage, the right to a reasonable workday, the right to organize and to deal collectively by representatives of their own selection, the denial that labor should be treated as a commodity, and similar principles which were adopted by our own government as a war policy towards labor, or which have been sanctioned by the enlightened opinion of the civilized world in the so-called labor provisions of the peace treaty. Under such a code, wage adjustment boards, or industrial courts, so to speak, would be given a code of the fundamental rights of labor as a basis for their procedure and decisions. There would be a reasonable guarantee that the grievances of employees would be justly settled. Protection of the public against strikes would be unnecessary, for they would never occur. The enactment of the anti-strike legislation now before the Senate, however, without the assurance of any fundamental rights of labor, would be equivalent to the imposition by force upon an unwilling people of a political constitution which did not contain any guarantees as to the rights

of freedom of speech, of worship, or of assembly, and announcing to the individual citizens that they should submit all their injustices to a series of boards or courts under that constitution and thus secure a just settlement of all of their complaints. The enactment of anti-strike legislation for the railroad employees would, in other words, be identically the same as the forcing upon a part of the people by all of the people restrictions for their government without any measures for their protection.

We submit that such legislation is not only unjust and intolerable, but is opposed to the fundamental ideals of American democracy. If labor is to be deprived of the right to strike and is to be required to submit all its grievances to judicial determination, such a policy must obviously be preceded by legislation or agreement which will give to labor in the form of industrial principles or fundamental law the assurances of its fundamental economic rights. Without such a policy, anti-strike legislation will open wide the door to an intolerable exploitation of the working classes which will result in violent protest and the breakdown of civil government.

It is for this reason that the third practical consideration against such legislation may be stated. It is not feasible. Being unjust and undemocratic, free men will not endure it. It is, therefore, impracticable. All of the industrial and commercial nations of the world have in past years tried such a policy in some form, and with the exception of France and Russia under the old regime, they all found that it did not work. In Russia, discontented public service employees were executed, and in France, because of its laws for universal military service, strikers were called to the colors and defeated by military coercion. Hundreds of thousands of men cannot in the event of a discontinuance of work be placed in jail. Men will not submit to the confiscation of their financial resources and property because they have refused to accede to unjust working or living conditions.

These facts must surely have been known to the Senate committee which recommended the Cummins bill. If not, they should have known. Three years ago, an exhaustive report was prepared under the auspices of this committee, which showed that anti-strike legislation wherever tried had been found to be impracticable and ineffective.

Finally, it may be said that the proposal of such legislation

at this time is all the more unpardonable because it is unnecessary. There has been no strike of any consequence among transportation employees for more than thirty years. There has been no recent threat of any serious stoppage of work. As a consequence, an attempt to justify such proposals by the claim that the public interest must be protected against strikes falls of its own weight, and leads irresistibly to the conclusion that some other motive, not so laudable as the protection of the public, is back of this legislation. To those who know conditions and have an insight into the psychology of the railroad worker, it is apparent that the enactment of such legislation will have exactly the opposite effect to that for which it is intended. It will add to existing discontent, stimulate dislocation of transportation facilities, and probably lead to a stoppage of work on a scale that has been hitherto deemed incredible.

### *Fundamental Considerations Involved*

The fundamental considerations which are involved in a permanent railroad policy and for the correct working out of which time and study are necessary are fourfold in number. In the first place, justice must be done to those who represent capital invested in the transportation industry. These rights are comparatively easy of ascertainment and satisfaction. The government can, by judicial process, determine the amount of capital which has been prudently and honestly invested in the railroads and acquire the ownership of the properties by justly reimbursing those who represent capital. There should be no confiscation of investment values, or rigid adherence to any theory of valuation which, while logically correct, would result in loss and injustice. Acquisition of and reimbursement for railroad properties should proceed after a judicial consideration of all the facts and interests involved and should follow the lines of an equitable adjustment of the claims of all parties concerned.

The labor organizations, in putting forth the so-called Plumb plan, have been accused of attempting to confiscate the property of innocent persons without due process of law by failing to distinguish between those who have been responsible for improper methods of railroad finance and the holders of securities which have been improperly issued as a result of these methods. Nothing can be farther from the truth. We have no desire to injure the holdings of the much-famed "widows and orphans" or to re-

duce the reserve of savings banks and other institutions. This charge against us is especially absurd since our own people are large depositors in savings banks and similar institutions, who unfortunately may have been victimized in the past by the vendors of railroad stocks and bonds. We wish to see justice done for the public and to all parties concerned. We know of no better method to attain this end than by judicial consideration and determination of values of railroad property and securities upon the basis of the equities and the facts.

In the second place, another essential condition to government acquisition and operation of the transportation industry should be the guarantee to railway labor of its fundamental rights. The legislation enacted should contain an industrial code, so to speak, which would embody the fundamental guarantees to labor upon which future adjustments of wages and working conditions should be based. These principles were sanctioned by our government during the war and were embodied in the so-called principles of the National War Labor Board. They are also contained in the peace treaty in the labor provisions of the Covenant of the League of Nations. Among the most important of these is the right of workers to organize and deal collectively through their own chosen representatives, an eight-hour workday, and the right to a living wage. By way of illustration, as a preliminary to a permanent railway policy, there should be, after a complete investigation, a determination of a living wage for all occupational groups which would afford not only subsistence but a reasonable standard of health and comfort to the families of railway workers. Upon the basis of these minimum standards of a living wage, differentials should then be fixed varying according to the productive worth of employees to the industry, corresponding to their training, skill and experience. With the acceptance and practical application of these and other fundamental rights of labor in the fundamental law, railroad employees would be satisfied, future adjustments between labor and management would be comparatively easy, and there would be no danger of strikes or dislocations.

In the third place, the policy should be accepted at the outset and should be given a practical application, under which employees and managers should participate in increases in railway earnings in the form of increased wages or salary payments, and the public should be guaranteed a similar participation in the shape of

lower transportation charges or more improved and safer transportation facilities. Such a policy would make for economy and efficiency of railway operation and would bring all interests concerned into enthusiastic cooperation in making public operation a success.

Finally, the constraining motive at all times should be public service and the public good. The interest of the public is obviously paramount. With the recognition and observance of the fundamental rights of or safeguards to labor in the way in which I have indicated, there would be no clash between railway employees and the government. The transportation workers would cordially and single-heartedly unite in operating the railroads in the interest of all the people. As a matter of fact, the interests of the public and of railroad workers would be so similar as to be indissoluble.

### *The Ideals of the Employees*

These are the ideals and aims of railway employees. The attempt has been made to apply them concretely in the bill which we have submitted to the Congress and which is popularly known as the Plumb Plan. We do not claim that this bill is perfect. Some modifications of it will undoubtedly be necessary. We do believe, however, that the fundamental principles underlying it are absolutely sound. In this connection, I might say that our opponents have attempted to cast a stigma upon our proposals by asserting that we are endeavoring to Russianize the railroads by substituting for the present domination of capital an autocracy of labor—that we are endeavoring to secure the control of the transportation industry by labor and its operation by labor in the selfish interests of labor. It scarcely seems necessary to reply to such obvious misrepresentation. What we are trying to do is to place the railroads under democratic control, and with the fundamental rights of employees guaranteed and their future hopes safeguarded, to have the industry serve all the people, and not any one class. It is our purpose to see the present domination and exploitation of the industry by capital supplanted by a democratic control and administration.

Since our own Declaration of Independence and the French Revolution, the principles of political democracy have been growing and spreading over the face of the earth until they have now practically been accepted by all civilized peoples. The

experience of recent years with political democracy has taught us that it will be a failure unless it is supplemented by rational measures of industrial democracy. Industry must cease to dominate our democratic institutions. Industry must be subordinated to our democratic institutions and ideals. The members of the railway labor organizations are peculiarly American. They are principally born of native fathers whose fathers and grandfathers were in turn of native birth. They cannot be accused of being corrupted by foreign doctrines which are revolutionary, fallacious and unsound. They are Americans from the beginning. They are Americans now. Their present purpose is not to "Russianize" but to "Americanize" the railroads. We wish their management and operation to be brought into conformity with the democratic aspirations and ideals of the founders of our self-governing republic. It is because we desire this and are working for it that we urge the extension of the present government control of railroads for a period of two years so that time may be given the people to study the problem and pass upon it intelligently.

To hurry the railroads now back to private ownership and operation by means of the Cummins Bill, the Esch Bill, or any other legislation, would, in our estimation, be a public calamity.

## RELATIONS OF RAILROADS AND THEIR EMPLOYEES

W. G. BESLER

President Central Railroad of New Jersey

**M**ANY years ago when I was in college in Boston, I boarded with an old gentleman who had made and lost three fortunes in railroad contracting. He was a fine specimen of the olden time gentleman, and had a world of wisdom and common sense stored up in his head.

By reason of being a member of the family, so to speak, I heard about some family difficulty which was taking place between the brother-in-law and his wife, also an old couple, and which resulted in a suit for divorce by the wife on account of alleged incompatibility of temperament and cruelty.

The old gentleman with whom I boarded was expected to be the star witness and furnish the necessary conclusive testimony, but on the day of the trial (so I afterward learned), his evidence was to the effect that he saw no reason for any divorce, and that in his opinion the couple were getting along about as well as married people usually do!

If I were to be summoned as the star witness in an allegation for the granting of a divorce of the railroad employees and employers, I would have to testify that, after an experience of 39 years in close and intimate personal touch with each and every branch of railroad service, I am of the opinion that, fundamentally, there are no real differences of any consequence between the railroads and their employees; that as a rule they have gotten along together, are living together very much more comfortably and happily than most other classes of employment; and that there is no occasion for meddling by Boards or Commissions or other outside agencies, as all difficulties in the family can be practically adjusted among themselves if given a fair chance to get together.

In the 17 years that I have had active charge of the management of the company with which I am connected, there has never been a grand officer of any of the four brotherhoods in my office on account of difficulties or troubles with their organizations; and it was not until the government took over the control and op-

eration of the railroads, that an officer of one of the newly formed unions which has sprung up since that time, found it necessary to ask for an audience, and even his difficulty was subsequently adjusted satisfactorily through mediation and arbitration.

Of course, it takes the exception to prove the rule; and there have been railroads which seem to have had more than their share of trouble with their employees, but we all know there is an underlying cause or reason for every effect; and, in my opinion, if the necessary degree of intimacy had existed between the management and the employees, it is more than probable that the difficulty would have been avoided—the best evidence of which is that, subsequently, they *did* come together, but only perhaps after hard feeling had been engendered, which might have been avoided.

I wish to emphatically assert that, in my opinion, railroad employees have, since the inception of railroading, and up at least until the recent past (if I should even make that exception), been, as a rule, most loyal in their sentiment and pride in behalf of their particular companies; and that such a company spirit has been much more characteristic in the case of railroad employees, than in almost any other class of employment.

There are reasons for this, one of which is that the character of the service, particularly in the *operation* of railways, requires a greater degree of initiative than is ordinarily permitted in other kinds of service, as, for example, in large mills or factories where the individual becomes but a cog in the wheel, and seldom sees or comes in contact with the outside world of business.

Railroad employees have always been what may be termed a preferred class in labor circles. Their rates of wages, at least prior to the war, were usually in advance of that paid to other classes of labor from which they were recruited—the best evidence of which is that they left such employment, or decided for themselves not to enter such other places in preference to entering railroad service.

Under the old order of things, the men, through their representatives in the brotherhoods, made their occasional requests for adjustments in wages, which were taken up, considered upon their merits, and after conferences and mutual concessions, a new schedule was adopted. The men know in advance about how much they were entitled to receive, and the companies granted according to their ability to pay, or declined to allow be-

cause of reasons which were discussed to a finish and settled then and there. It was not until a nation-wide movement for standardization of wages was inaugurated, that the question of railroad labor and railroad conditions of employment and wages, attracted much more than local attention, and as to this I shall have more to say later on.

Perhaps right here may be as good a place as any for me to remark upon the statement so frequently made that railroad employees were profiteering; and let us stop a moment to consider just what this means, and what has taken place. There are always two sides to every story, and on the one side I will give a few illustrations of which I have a personal knowledge.

A large department store in the City of New York has under contract a furrier who makes its fur goods. A few years ago this furrier received \$85.00 for a certain style of lady's coat. For the same coat he now receives \$135.00; and curious to know what the article might retail for, he sent his wife to the store to follow it up, and she found when the garment was produced from the case, that the price tag upon it was \$425.00.

Another instance is a local haberdasher who does business in a store located near my office, who had secured a lot of gloves of fairly good quality at a low price, and thinking that he would stimulate sales and favor his customers, he places a 50 per cent profit upon them, and offered them as a bargain sale. Customers came in, looked over the gloves, and said they wanted something better, etc. About that time he noticed in the window of a neighboring store gloves of about the same quality, at a very much higher price; so he returned to his store, withdrew the sale, and increased the price 400 per cent, after which the gloves went off like hot cakes.

Another instance is that of a friend of mine—the president of a company doing business here in New York—who has been in the habit of purchasing shoes from the “XYZ” store, where he bought three pairs at a time, for which he had always paid \$8.00 a pair.

Something over two years had elapsed, and he went to the store to purchase his usual allotment, but, as he says, fortunately he asked the price before telling the clerk to wrap them up and send them to him and charge to his account, and he was told that the price was \$24.75 per pair. He asked how they arrived at such an exorbitant figure, and was told, \$23.50 for the shoes

and \$1.25 tax, and further, that leather was higher and that they had to pay at the factory double, and even more, the cost of former prices paid to their various classes of employees who made the shoes; whereupon he told the clerk to keep the shoes, as he had no use for them, and went to another store, where a shoe of about the same appearance was displayed in the window for \$8.00. He tried them on, and found they were satisfactory so far as he was concerned, and then asked how it happened that in the other store he had been asked the larger price. The clerk replied that the other store which carried a higher grade of goods, did, in fact, have a slightly better grade of leather, but that all of the costs in the manufacture at the factory were exactly the same for the reason that the various unions adjusted and settled that matter, so that all of the difference above \$8.00, except for the better grade of leather and tax, was on account of "easy money."

And I might go on with many similar illustrations of actual occurrences. Profiteering gets no farther than the other party is willing to permit it, or deliberately aids and abets it by his patronage.

Profiteering? Yes, that is the word if we wish to use it, and I know of no reason why railroad men should be segregated from every other class, while the grab for increased wages to keep up with the increasing high cost of living is going on; and as compared with the so-called profiteering of certain other classes, the railroad men are the veriest pikers, and have not yet learned even the rudiments of the act.

The only plea upon which such conduct might be justified is that it is the spirit of the times, and that we are living in these times, and following the old adage, of "When in Rome, do as the Romans do." But this is no answer, and I do not approve nor adopt any such principle, and do not, by any means, excuse nor justify the vicious circle.

The present situation will not continue. Unquestionably, and as surely as the fact that we are sitting in this room, prices and wages will come down. Everybody knows that, and believes it, and will welcome the time. I will say, however, right here, that I do not believe that, at least for some time to come, the wages will fall, generally, to the pre-war level.

History repeats itself, and I will read to you an abstract from an editorial appearing in yesterday morning's "Sun"; it is a quo-

tation taken from Colonel Emmons Clark's "History of the Seventh Regiment" (1890: published by the Regiment):

The inflation of the currency of the country during the war (1861-65) and the consequent extraordinary speculation and increase in nominal values terminated in a great financial panic in 1873, which prostrated business, undermined credit and deranged the channels of trade and commerce.

Habits of extravagance had been acquired by all classes of the people, and none cheerfully submitted to a reduction of income and to the enforced economy which were the natural results of the great change in the financial and business affairs of the country.

For many years labor had been in great demand, and had been extravagantly rewarded, and by means of trade societies had been able to dictate terms to employers.

But with the prostration of business the supply of labor exceeded the demand; the reduction in wages was stoutly resisted, and the year 1877 witnessed a general strike among the railroad employees of the country which threatened to entirely paralyze trade and to result in great sacrifice of life and property.

The idle and vicious hastened to enlist under the banners of those who demanded higher wages, and by riotous demonstrations and by acts of pillage and wanton destruction brought discredit upon honest labor.

The communists, largely recruited of late from Europe, also availed themselves of the opportunity to swell the excitement and in threatening language to promulgate their theories of liberty and equality.

In many cities the mob obtained complete control and successfully resisted the civil authorities and the military ordered to their support.

The small number of regular troops, the entire absence of organized militia in some States and the inefficiency of local troops in many cases or their sympathy with the rioters left a large part of the country exposed to the dangers incident to periods of disorder.

About the first of August peace was restored, \* \* \* \* \*, generally by fatigue, exhaustion and reaction which naturally follow a prolonged disturbance.

Dozens of our employees have said to me, "Give us back the old times and conditions, and you can have the increased wages which we have received, but which have been of no real benefit." Fundamentally, our people are sound at heart, but, of course, no one wants to be the *first* in a surrender of the present wage, and before a dollar has increased in its purchasing power.

But it *will* come, just as it *always has* come. The first step, as has so repeatedly been pointed out, should be through increased production, whereby a greater number of articles or units or the larger volume of output shall be secured at no considerably increased cost of production.

I will not take the time to go into the general details of this problem, other than to say that since the only article which railroad men produce is *transportation*, there must be in this, as well as in other lines, a greater production at a no greater cost. And to this end, the men, or their leaders who advise them, must desist from their efforts to limit increased production

through such methods as demanding the shortening of trains to fifty cars, or of speeding up of slow freight to a standard of miles per hour, which they know better than anyone else cannot be secured or maintained except by *lessening the load*, which defeats the possibility of a lesser cost per unit, which the increased size of locomotives and greater length of trains were designed to effect.

In a democratic form of government, we give up some of our individual rights and wishes or preferences for the good of the many; and in this matter of increased production, the railroad men must join with their brother co-laborers in other fields, and each do their part in this direction, in order that all may benefit thereby. If this is not done, then in no other way, except by an immediate and direct cut in wages, will it be possible to secure lower freight rates, and although a freight rate is but an infinitesimal part of the price of, for example, a pair of shoes, it has its effect, and in the aggregate, when all other crafts must similarly be advanced to meet on their part even such an infinitesimal amount, the aggregate becomes a very large sum.

In a recent editorial in the "Sun," there appeared the following:

As a matter of cold, hard fact the railroads never underpaid their labor and their labor never tried to pillage the railroads until the Government began to take out of the hands of the railroads the duties and functions which belonged to the railroads.

As a matter of cold, hard fact the American railway system never mortgaged its body, life and soul to gratify the exactions while stimulating the excesses of labor union leaders. It was the Government itself, after it took the railroads away from their owners, which did that very thing as a gross political gamble.

I quote these two paragraphs for the reason that, as I have previously stated, there is a cause or reason for every subsequent effect.

By an Act of Congress authorizing him to do so, the President by proclamation, took possession and assumed control of the principal lines in the United States at 12 o'clock Monday, December 28, 1917; and in his statement accompanying the proclamation, he said, among other declarations, that—

The Secretary of War and I are agreed that all the circumstances being taken into consideration, the best results can be obtained under the immediate executive direction of the Honorable William G. McAdoo, whose practical experience peculiarly fits him for the service. \* \* \*

I call upon the gentlemen present here to-day to bear witness to the fact that in every successful enterprise, be it commercial,

social, financial, political, military, agricultural, or otherwise, of which they may have had any personal knowledge, there is, and of necessity must be, at its head a master mind, thoroughly competent to manage and direct its affairs, and around which revolves the entire organization.

When taken over by the Government, there were approximately 1,300 Railroad Companies, with about 260,000 miles of railroad, worth between 18 and 20 billions of dollars, represented by 9 billion dollars of stock, and owned by 650,000 shareholders. For several years we had in this country heard much about the wasteful extravagances and incompetency of railroad management, and that a million dollars a day might be saved, and so on and so forth, that there had come to be in the minds of many people an idea that if the Government might take over and run the railroads, all of this much-to-be-desired improvement would result.

It was in the railway fiscal year 1911, that Louis D. Brandeis made famous the proposition that by scientific management the railways could save one million dollars a day. At that time the operating expenses of the railways were \$5,250,000 a day, wages being \$3,311,000 a day.

The first year of operation by the United States Railroad Administration ended on January 1, 1919. Operating expenses had grown to \$11,300,000 a day, wages being \$7,500,000 a day. Since which time, with the further increases that have been made, and costs of material being no less, both expenses and wages are correspondingly greater.

And now we come back again to the two paragraphs. If the substance thereof is true, or only half true, what is the reason? In my opinion, there is only one answer: Blundering, bungling incapacity in high places.

A blunder is to move or act blindly, stupidly or without direction, or steady guidance, and such conduct is compatible with the inexperience of childhood, and which is more often than otherwise, laughingly excused for that reason. But there are shades or degrees of blunders! Thus there is error, which is a wandering from truth, primarily in impression, judgment, or calculation, and by extension of the idea in conduct. Again, there is mistake, which is the false judgment or choice, and does not, as error sometimes does, imply moral obliquity. Now that we have had practical experience with it, we can note the blun-

dering that has taken place under the mistaken impression that it was the real article in railroading. Also, the blundering in the dissipation of the \$500,000,000 revolving fund.

Further, the bungling of the wage demands which, because of failure to comprehend the question, resulted in absurd readjustments and the granting of schedules of wages for certain classes without due regard to the character of the service performed, thus establishing inappropriate and extravagant measures of compensation that caused discontent in other classes.

And again, the bungling in the handling of the railroad labor problem. With the advent of the Director General a very extensive system was inaugurated for handling railroad wage and labor problems; which reminds me of another true story which transpired several years ago, when a new Vice President in charge of Operation, entered the service of an old railroad system which was running along in fairly smooth shape. In addition to inaugurating a large number of so-called reforms, patterned after the railroad upon which he had previously been employed, he thought it necessary to purchase a new 100-ton steel wrecking derrick, to replace the old derrick, with its wooden masts and light capacity booms,—upon which the comment was very shortly thereafter made, “Well, by G——, he’s had use for that derrick every minute of the time since.”

Many years ago a gentleman who had written ably and argued plausibly on the difficulties which as of that day confronted the railroads, was rewarded for his efforts by being elected President of one of our railroads. I will not go into the details of what occurred, but the verdict given after his demonstrated failure and removal from office, was that, “He had attempted to run the railroad with girl stenographers and college graduates.” It was simply a case of inexperience vs. practical experience, and of the square peg in the round hole.

It is estimated that there are employed in all grades, lines of service, and in various capacities upon the railroads, approximately 2,000,000 persons, or about 2 per cent. of the total population of the country, and of this number, prior to the government’s taking over the railroads as an alleged war necessity, probably not to exceed 400,000 were organized and members of the then existing brotherhoods and other railroad organizations.

Immediately—with the advent of the Railroad Administration—the greatest campaign of organization ever known became

effective. Ten new organizations have been formed and others are in process. The passage of the Adamson Law in 1916, with its hitherto unknown feature of back pay allowances, involving vast sums of money, was a sufficient example and allurements.

The Director General even capitalized the novelty when as Secretary of the Treasury he appealed to the men to invest the money in Liberty Loan Bonds, the campaign for which was going on.

The great Pennsylvania Railroad, which had always paid its employees the highest going rates, and whose shop men had never found it either necessary or desirable to organize, was unionized from end to end; and from the great Altoona shops, always non-union, came a telegram to the Director General conveying its felicitation and announcing that McAdoo Lodge No. 1, Brotherhood of Boilermakers, had received its charter. What is true of the Pennsylvania Railroad, is equally true of all the others.

Like the 100-ton derrick, the Labor and Wage Adjustment Board had had its full 100 per cent. of service ever since its creation, and the orders, interpretations, supplements, and interpretations of supplements, etc., have been issued in such volume that it is currently reported that the men themselves do not understand, and in many cases cannot calculate the wages they are supposed to receive thereunder.

The rank and file of employees have never asked, and do not want a place on the Board of Directors. It involves the responsibility which comes only with ownership; and as to the success or failure of the enterprise, a labor leader here in New York recently stated that the financial difficulty which confronted the company was of no concern to the men, and that a receiver's wages were just as good and acceptable, as the company's. What the men want is a voice in the matter of their wages and conditions of employment, and this they already enjoy.

And the word which has been passed around is that the men would prefer the simple and direct form of negotiation with their own officers, who understand local conditions, and have a sympathetic interest in their welfare and in adjusting their working conditions, so as to make possible the greatest degree of comfort and happiness in their home lives. This arrangement does not at all preclude the possibilities of usefulness of their existing organizations.

In the hands of sober-minded, serious-thinking men serving as officers of their local organization, there is quick and immediate action possible in reaching a mutual understanding in those cases where such a course is necessary and desirable; and in my experience I have found that the men themselves know as well, or better than the officers, who is the person or persons responsible for trouble or an accident, and whether the discipline which is applied is merited and well deserved, or whether there has been a miscarriage of justice, and a man not guilty has been punished.

And I will say further, that I have never known of a case where sure and swift discipline was properly applied, with the element of mercy interjected, as should always be the case by reason of the third party,—the man's family, if he has one—being made a co-sufferer,—that it has not had the endorsement of the men themselves; and the most that the grievance committee will undertake is to ask for as much leniency as in the opinion of the officers the seriousness of the offense may permit.

Now, a few remarks on the subject of pending labor legislation:

In my opinion, the provisions of the original Esch Bill concerning labor adjustments are impractical and impossible, and I confidently predict their failure and ultimate discard. Any system which requires the President to appoint members upon a board or commission at once opens the door for "deserving politicians," and is fatal to real accomplishment.

The problems involved are great, but they could be met successfully if there were a disposition to apply to them the knowledge gained in the school of experience. But instead of profiting thereby, most of our politicians are either trimming, or are openly following dreamers, who having no proper conception of the magnitude of their task or the perils invited, propose, in effect, nothing better than government ownership, with its inevitable results of debt, extravagance, spoils, favoritism and inefficiency.

All over the world the difficulties with respect to the labor problem are practically alike. In England there is controversy between the Government and the labor leaders over the Temporary Wage Regulation Act, which, in its provision for—

The establishment by the Government of an Industrial Arbitration Board, whose decisions shall be final and binding against any subsequent actions, such as strikes and lockouts; also, that the unions shall agree to

refer all disputes to this tribunal, with penalties for failure ranging from sequestration of funds and liability of officers and members to prosecution, to validating the provisions of the Trades Disputes Act in certain eventualities,

and which, in its ramifications, endeavors in its fashion to meet the like situations as they have arisen in our own country.

A recent dispatch from Washington is to the effect that Senator Cummins says he contemplates an extension of the anti-strike provision in his bill to the basic industries of the United States, including the production of fuel, iron and steel, foodstuffs, lumber and building materials, and clothing.

An ancient law giver who had handed down to the people a new system of law, was asked why he provided no punishment for one who should slay his parent, made reply that he had not provided a penalty for such an act, as he did not contemplate that anyone would do such a thing.

And this suggests to me a thought that as continuity of service is what the people of this country desire, and intend to have, and by the various enactments which have bound capital when engaged in the business of transportation in such a way that it may not escape or stop or cease in its performance, we might, with plausibility, assume with the ancient law giver, that when labor enters into the business of furnishing its necessary part in the performance of transportation, and with a full knowledge of the situation at the time it so enters, there shall be no necessity to provide an anti-strike law, for no one contemplates that labor having entered such service, a penalty for such a crime will be necessary, and that the sacred principle of *continuity of service* is assumed alike by capital and labor when they come together in the quasi-public service of furnishing transportation.

Manifestly, no man may be compelled to labor against his will, for unless he be a convict in a penal institution, it would be enslavement. In a recent proposition of somewhat similar nature wherein a few members of a society refused to act in concord with the society as a whole, someone made the suggestion that, "There were birds which could sing, but who wouldn't sing, and the thing to do was to make them sing," and the way to accomplish this was by setting the other members of the society upon them, and through the medium of persuasion and the effect of public sentiment, inducing the recalcitrants to change their views or else get out!

Someone has suggested profit sharing as the panacea, but I

am entirely opposed to that plan, or any other paternalistic method; and it is also clear that a large majority of labor leaders and their lawyers do not want it.

What labor desires, as is evidenced in every controversy, and in all of the wage adjustments at Washington, is the certainty of *fixed wages!*

If profit sharing is established, they feel that gradually the equity of sharing losses, as well as profits, will be forced upon them, and that in adjusting wage scales the sharing of profits will be a factor tending to lower the fixed wage; that by even sharing profits without sharing losses, they become, in a sense, co-partners, but if not, they would clearly be joint adventurers with capital, and thus constitutionally become subject to the same regulations as capital and its owners.

The enactment of the Adamson law was a grave mistake; it is class legislation pure and simple. All class legislation is pernicious, and has no place in a democracy, and wherever it exists it should be wiped out. We hear judges repeatedly charge juries that the parties to the suit or proceedings are equal in the eye of the law and each entitled to exactly the same measure of justice. This is but repeating in different words a declaration of our bill of rights. Apparently exceptions have been engrafted on this doctrine in the shape of class legislation, enacted by way of exemptions or prohibitions tacked to enactments. They should be wiped out from top to bottom, including all exemptions from taxation, and freedom from services.

It is declared that there shall be no taxation without representation. Very well; but there must also be a rule that there shall be no representation without taxation, and no representation without service. This, of course, will tax charitable, religious, educational and kindred activities. This is intended, and it will serve a helpful purpose in promoting thought activity and greater service. Exemptions are nothing more than a subsidy, and, like all subsidies, insidious, leading to laxity and inertia and other disorders that need not be enumerated.

Several years ago I clipped the following paragraphs which appeared in one of our leading papers:

The country really possesses a fair skeleton machinery for all the ordinary activities of life, and not a bad one for war work, if friction and obstruction did not develop from individual dilatoriness, conceit, and perversity.

The solution of the existing difficulties is to be found, we believe, in using the existing facilities fully and intelligently, and in the natural way,

rather than in distorting them to novel uses, for which they are not adapted, or in creating improvised instruments and methods, necessarily crude and hasty, to perform functions that have been carried on for years satisfactorily in the old way.

We take it there are men of ability and experience in the United States, who are capable of meeting almost any emergency with the means at command, or by a proper evolution thereof, if their brains and energy be not paralyzed by the dictation of formalists and visionaries. Why not give the real men a chance? Why must everything be done in some new or experimental way, after a crisis has been forced by obstruction of the recognized and hitherto effectual devices?

with which I concur, and now reach my conclusion in the following summary:

(1) The relations between the railroads and their employees are per se generally satisfactory, or can be made so.

(2) That a large majority of the rank and file desire to have the railroads returned to their owners and former relations restored.

(3) The charge that railroad men are profiteering is no more deserved than a similar charge against practically every other class of labor might be deserved.

(4) That to do their part toward reducing the high cost of living, the employees in railroad service should actively co-operate in those efforts and measures which will increase the *volume* of transportation produced without further increasing the *cost* of production.

(5) That the taking over of the railroads by the Government as an alleged war measure was a blunder, which its now acknowledged failure demonstrates and proves.

(6) That the brotherhoods under conservative leadership can be made the medium for constructive effort to the mutual advantage of the company and its employees.

(7) That the labor provisions of the Esch Bill are impractical and impossible of accomplishment.

(8) That all class laws should be repealed.

(9) That the government should keep hands off and confine itself to its proper function of governing.

(10) And lastly, that we subscribe to and endorse the oft repeated declaration as printed in the New York "Sun," that in the conduct of business matters:

"The touch of the hand of government is the touch of death."

## THE ADJUSTMENT OF LABOR CONTROVERSIES

W. N. DOAK

Vice-President Brotherhood of Railroad Trainmen

I AM indeed very glad to have this opportunity of saying a few words to the business men and business women of our country, and to try if possible, to present the labor viewpoint on certain subjects. The subject assigned me is that of wage adjustments and employment conditions on the American railroads. And if by chance, Mr. Chairman, I should happen to overlook my course and get on the time of Mr. Lee's train, I hope that you will call on Dr. Lindsay, because he was warned when he assigned this subject to me that I may get by my time. And if that does not settle the question, I shall ask Dr. Johnson and some of these good gentlemen that have served on boards of arbitration to arbitrate my case for me.

I wish to speak to you to-day, as an American citizen, from the standpoint of an American citizen, on distinctly an American question. First of all, I hope none of you will think that the gentleman, the member of Congress, expressed fully and completely the sentiments of railroad employees when he made the assertion last night that there was an attempt on the part of railroad employees to Russianize America. There is not a man, or woman among you that detests the principles of bolshevism, radicalism or anarchy more than I do. There is not one among you that will go any farther to eliminate those doctrines from our country than I will.

Fortunately I have some views on this subject that it is not necessary to apply specifically to the Plumb Plan, to Government ownership or Government control. My views will apply to any of them. I wish to speak of the experience of America in handling and adjusting labor disputes on American railways, and incidentally to draw a comparison with the experience of other countries. I hope you will bear with me for a few minutes, so that I may be able to convince you that America has had, and will continue to have, the best methods of settling these questions.

I heard President Besler refer to the English system a few minutes ago. I should not recommend that system to the United

States, because recently in Great Britain all of the railroad employees went out on a strike. That incident within itself is enough to convince you that we have something better in America.

There is no danger of having strikes on the railways in America if you will approach the labor problem from an American standpoint, and disregard the false sentiment which has been built up in this country by means of propaganda that is detrimental to the true interest of the American public. There is not one scintilla of truth, and there has not been one scintilla of truth in the reports that have been heralded over this country that there is a threatened railroad strike to compel the adoption of the Plumb Plan, or of any other plan.

I heard with great interest President Besler's statement that he was opposed to the original labor provisions of the Esch Bill. I heard a gentleman say last night, that the labor provisions of the Esch Bill as passed by the House, would not work. The proof of the pudding is the eating. That plan has worked for the last three and one-half or four years, both under private ownership and under governmental control, without a single stoppage of traffic on any of the American railroads. You doubtless heard the statement, that the Esch Bill was a piece of legislation, which, if finally enacted, would give the railroad brotherhood chiefs the whip hand and prevent the carriers from getting into court. I am extremely sorry that the gentleman, who made this remark, did not fully consider the matter before his statement was made.

After a study of all plans and all forms of mediation, conciliation and arbitration in the civilized world, I have come to the conclusion that there is only one country that handles the labor question on the railroads properly, and that country is the United States of America. There has been statement after statement carried in the press that the Dominion of Canada has something better. All you have to do is to compare the conditions in Canada under the Lemuex Act with the conditions existing in the United States under the Newlands Act and the old Erdman Act, and then you will be convinced that we had best keep the Newlands Act. There has been but one failure under the Newlands Act in the United States, and an arrangement was reached by the President and Congress which prevented a strike. At least ten per cent of the disputes investigated under the Lemuex Act resulted eventually in strikes. When the conductors and

trainmen in the Eastern territory made a concerted movement in 1910 to secure an advance in wages, involving this entire Eastern territory,—Canada as well as the United States,—we reached a settlement under the Newlands Act in the United States, and there was a strike in Canada under the Lemuex Act. That should be enough to convince you that we have had better methods.

I agree with Mr. Besler that it was a most unfortunate thing that the Adamson Law was passed, because in it Congress declared something that we never wanted Congress to declare. You say the railroad men were responsible. You have heard the story heralded over the whole country that the railroad employees held Congress up at the point of a gun. It is just the opposite, if you please. We were in this city and would have settled; possibly if we had not the show would have gone on and lasted about six hours and would have been over. The President of the United States demanded that we come to Washington. He is responsible and the Congress, for the passage of the Adamson Law; it was something that we did not ask for—did not want. But it was passed, it was carried to the courts, and the courts said it was constitutional, but no one has said and no court has said to this day how the law should be applied.

We established at that time machinery to apply the Adamson Law and that machinery functioned, as you heard Mr. Shea say last night, for a period of over ten months, and adjusted nearly 30,000 disputes, with only three deadlocks. When war was declared, and the railroads taken over by the Government, the work of applying the Adamson Act was handed over to another board. Two additional boards were created, and these boards, numbered one, two and three, made adjustments for the various classes of employees.

Board No. 1 was organized on the 8th day of April, 1918, Board No. 2 in July, and Board No. 3 in October. The three questions which caused a deadlock in the former board were settled by Board No. 1. In addition this board has settled 1500 other disputes, any one of which might have caused a strike. No dissenting opinion has been rendered by any man on the Board, and so far as the public knows and so far as I know as a member of that Board, the decisions have all been unanimous. The same thing is true of Board No. 2, and of Board No. 3. According to latest reports there has been over 3100 disputes settled by these

three boards without a dissenting vote and without a deadlock.

They say that the present Esch Bill will not work. I do not know whether it will or not, but I do know that neither the original Esch Bill, nor the Cummins Bill will work. If you want to have chaos in this country, and disturb transportation in this country, advocate and have passed such legislation as was originally contemplated in these two bills. Who is advocating anti-strike legislation, and why? We have had strikes in other industries, we have had disturbances, but we have not had trouble among the railroad employees, except for a few illegal, unauthorized strikes. Why? Simply because we have literally adhered to and are to-day advocating the principle of direct negotiation and collective bargaining between the employer and the employees.

The Esch Bill as amended declares in no uncertain, but in emphatic terms: "It shall be the duty of all carriers subject to this Act, and their agents, officers and employees, to exert every reasonable effort, and adopt every available and reasonable means to avoid interruption to the operation of a carrier subject to this Act, growing out of controversy or dispute over any question of wages, working conditions or discipline of employees." Written in the law! First of all, they must use every reasonable means, and if failure results, then they go to a board of investigation. If this board deadlocks they go to a second board. No man in this country has ever advocated more than one board in all the investigation acts that have been proposed. This bill provides for two boards and, if it is passed, the public will have the benefit of investigation by two boards before any interruption of traffic can take place.

But we hear the statement from every side: "These men have got to be tied down. You will have to enact anti-strike legislation." Such legislation was enacted in New Zealand, and throughout Australasia, with the result that there were more strikes than ever before. I am not saying that labor organizations will violate the law, but I do say to you as a correct principle of our constitution and form of government, no law can be enacted that will prevent an employee from quitting his employment. Such a law would be so contrary and obnoxious to the very spirit and intent of our form of government that it could not stand. Such a law would give you exactly what you do not want. When you give to the individual a right to do

something that you declare is illegal for a number of individuals to do, then you have mob-rule instead of legitimate organization rule in your country.

There is not a one of the railroad labor organizations but declares and enforces the rule that any member participating in an illegal or unauthorized strike will be expelled from the organization and cannot again be readmitted.

I had hoped that this question of adjusting labor disputes could be settled on some reasonable basis without agitation. I had hoped that the law providing for the return of the railroads to their owners, or whatever law may be enacted, would not deal with this labor question at all. I still hold those views. It is unnecessary—President Besler is entirely right—it is unnecessary to enact a law dealing with the labor question. But what we hear down at Washington continually is, “The public is demanding it; they have got to have something.” It has kept us very busy to extract some of the teeth that have been put into the bills introduced in Congress.

Let me show you how far they have gone. We have gone through this war without the slightest labor trouble on the railroads. There has been trouble in other industries, but none on the railroads. Bills have been introduced to punish striking railroad employees by imposing penalties in the way of fines of \$500 to \$10,000 and imprisonment up to twenty years, and the last thing that was introduced a few days ago was a bill by a distinguished Senator, to have a railway army of 200,000 regular troops to operate the railroads. In other words, some are not satisfied with these many bills that have been introduced inflicting all kinds of penalties, even to the confiscation of the property of the railroad employees in the state of New York if a man goes out on a strike in the state of Florida. They want—if you will excuse the plain common every-day American language—to inaugurate a United States Constabulary, or as the steel workers in Pennsylvania state it, a United States Army of Cossacks to ride down the American people on the American railroads. Is it fair? Is it in accord with American principles? Will it stand the test? No! The people would sooner or later revolt against such laws. We will observe the law. Pass any kind of an anti-strike law you please, but we shall try to change Congress, and get the law repealed.

If you but stay away from this labor legislation, we shall get

along all right. I have the highest regard for the President of the Central Railroad of New Jersey, and the same feeling extends all the way down the line. There is no feeling between us, but some of these people would make you believe we are at one another's throats all the time. Some of the best friends I have are the executives and managing officers of these railroads. If I needed money I should go to them quicker than to anybody else. If I needed advice along business lines I should go to them. We shall get along all right together if you will let us handle our differences in our own way.

My idea is to create boards upon which employers and employees have an equal number of representatives, and let them settle these disputes. Such boards have functioned well in the past and would function well in the future. As I said before, if you cannot trust practical men to handle practical questions, how do you expect politicians to handle such questions? I am opposed to the creation of any political board—I am opposed to the government's paying any member that sits on these boards. Both sides should employ their own men, compensate them, and not let them lose their personal contact with the interests which they represent.

A government board to adjust labor disputes will not work well, because a government official cannot get into close touch with individual laborers. My experience for nearly eighteen months in handling these questions convinces me that we have the only logical, reasonable plan, and it should be continued. If no law is enacted we shall create the boards. If the labor provisions of the Esch Bill, as it stands at present, are enacted into law, I am sure that you will have a reign of peace on the railroads, and you need have no fear of labor troubles.

## LABOR AND THE DEMOCRATIC CONTROL OF RAILROADS

FREDERIC C. HOWE

Director of Conference on Democratic Control of the Railroads

THE Conference on the Democratic Control of Railroads is not definitely committed to any plan. Its program differs from that of other organizations in suggesting that the railroad problem is so intimately related to the industrial life of America that there should be delay in the return of the railroads to their owners either for a definite period or indefinite period. In the interim a commission should be created, made up of all interests, financial, industrial, manufacturing, commercial, agricultural, and labor; and this commission should make a study of the railroad question, not as a railroad problem, but as an industrial problem, thinking in terms of the one hundred million people of the country—the manufacturer, the farmer, the producer—in order that the railroads of the country shall become an agency in which the emphasis is placed upon service to the entire country. The railroads should not be treated as though they were a private business, similar to a bank, a department store, a hotel, or some other private agency.

In other words, our organization is emphasizing the need of the entire country for a means of circulation, organized so that it will radiate to the smallest, most obscure village, to the smallest producer, so that he will have at hand—close at hand—a sympathetic instrument, not only for the hauling of his wealth, but the hauling of his person, wherever it should go. And we are urging upon Congress that it stay its hand, as was done in the matter of banking and currency legislation, until this critical agency, the most critical of all the agencies of the country, may be studied from this viewpoint, with the emphasis placed upon the real function which a transportation agency should perform.

I wonder, though I am not urging the government ownership of the railroads as the best way out of the present difficulty, if government operation of the railroads is as bad as we are led to believe. The statistics show that the number of people killed and injured under federal control is very much less than it was under private control. That is a gain. We are led to be-

lieve that the railroads, under government operation, have been building up a continuous deficit. That point is much emphasized; but beginning in July, the railroads turned the corner, as soon as any one had a right to expect them to. They paid the standard return, operating expenses, and everything else. In August the surplus was \$12,000,000, and in September it was \$19,000,000. Why did they not earn a surplus in the previous two years? Because the railroads during those years were run for winning the war, and Secretary McAdoo ran his trains filled with goods to the seaboard, and ran them back empty in order to get more goods. No one expected any agency during the war to do anything else but win the war. Then there was a period after that in which everything was disorganized. In some industries there were surpluses, and in others which had not yet begun to function normally there was a continuing deficit. The wage roll of the railroads was piled up over nine hundred million dollars under government operation. Does any one suppose there would have been no increases in wages under private control? They might have been less, they might have been greater; no one can tell. But in connection with that nine hundred million which we hear so much about, we do not hear that there were 145,000 employees put on for the purpose of speeding up war production.

Weeks before the government took the railroads over, there was no freight moving, as I recall it. Little, if anything, moved in New England, and scarcely anything out of Pennsylvania and the West. Within three weeks after the government took them over, something happened to that congestion. Freight again began to move, and it has been moving ever since. The months before the war—I am a commuter, and I know—there was scarcely a month, sometimes scarcely a week, when the New York dailies did not carry a headline of a smash on the New Haven. There have been no such headlines that I recall since the government took over the railroads. The other day I read, in the report of the regional directors who are actually operating the railroads, of the economies they had effected—not waste. We assume these men have been wasters, but the economies due merely to the better utilization of the physical properties totaled over two hundred million dollars, and that did not include the ten or twelve million from reduction in salaries, and many, many millions from other things. These economies may or may not have been wise. I merely mention them to suggest that government officials do not

consciously and intentionally, apparently, waste money. They are not wasters.

Not only is this true, but the railroads have been out of politics, out of politics, I mean, in the big way. Managers were able to devote themselves to railroading. They were interested, or they should have been interested, in making transportation efficient. And a large number of men found a new satisfaction, a new joy, in operating the railroads as railroads rather than as financial, speculative, monopoly interests that existed and maintained their power through continued interference with our political life. In addition, all shippers had a fair deal. They were able to get a hearing. Independent coal operators found it easy to secure cars. The same is true of shippers of food products. The freight car had no particular home. It was sent anywhere. The same was true of motive power. Freight cars were loaded more nearly to their total capacity as were freight and passenger trains. Hundreds of needless competitive passenger trains were eliminated. The best roads were used for hauling freight while other roads were used for hauling empties. Long, circuitous hauls were eliminated. Goods were routed by the most direct way possible. Terminals were consolidated. They, too, were used efficiently. Thousands of passenger offices were eliminated as were hundreds of needless officials. And only a beginning has been made in economies of this sort. For it was necessary to maintain the integrity of the private lines in view of their probable return to their owners. No one can yet estimate the economies that could ultimately be made if the Government definitely merged the 250,000 miles of railway into a single operating system.

Coming now to the specific details of the Plumb Plan, I find I differ from the suggestions that have been made that the real question is a question involving the investor, the wage-earner and the public; that we should seek to work out a plan which satisfies these three interests and then we will have a proper transportation system. That, I believe, is impossible under private control. Such a solution but continues the controversy. The main function of a railroad is transportation. Its purpose is to serve the entire community. The interests of the investor and the wage-earner are incidental to this end. This is the motive of railway operation in foreign countries, where public ownership is everywhere accepted.

Personally, I have very little interest in any transportation

adjustment which looks upon the question merely as a continuing war of interests, and I think it is possible to work out a railroad solution and a transportation solution in which those interests will function freely, naturally, collectively together, so that transportation by rail will flow as naturally and freely as by water, and in which these conflicting groups will no longer conflict. Think of the waste involved in the maintenance of forty-eight state railroad commissions, the Interstate Commerce Commission, courts, railroad attorneys and other officials, chambers of commerce and associations fighting rates. The government itself, politics, the President, our whole life, is interwoven with conflict, when it might be interwoven with co-operative, mutual effort. Until transportation in this country becomes a co-operative agency, it will not be transportation primarily—it will be something else. It will be railroading, but it will not be a function like the circulatory system of the human body, as it should be, to serve the nation. The railroads should be an agency for the producers, not an agency of capital. They should be an agency of the state, literally what they are legally said to be, charged with a public use.

While the Conference on Democratic Control is not committed to any plan, I personally accept the principles, the underlying principles, forgetting the details, of the Plumb Plan, as a means, a mechanism, an organization, by which all of the agencies and factors interested in transportation will work and function together to service; not to profits or speculation, not to strikes, not to conflict in which our railroad commissions will be involved. Conflicts in the courts will be minimized, if they do not pass away altogether.

I have only time to enumerate the other elements which feature in the Plumb Plan. It provides for a board of directors of fifteen persons, five of whom are appointed by the President to represent the public; five are selected by the operating officials and five are chosen from the classified employees. There are to be regional organizations representative of the public, of the officials and the employees. For the Plumb Plan looks to the decentralization of railroad administration so that it will come in close contact with shipper, producer and consumer.

The earnings of the railroads are to be distributed as follows:

1. Operating expenses.
2. Interest on the funded debt.

3. A sinking fund of one per cent which will retire the debt and leave the railroads in the possession of the Government in from 40 to 50 years.

4. Surplus earnings, if such exist, will be divided into two parts: one-half to the Government and the other half to the operating force. This division allots to the public one-half of the savings due to improvements in the arts and the skill of the employees, and the other half goes to the labor which produces it.

Under this plan the railroads would be operated in trust for all parties in interest of producers and consumers, for investors and workers. The motive of operation would be changed. That is all.

Columbia University is, perhaps, as efficiently managed, as a trustee corporation, as the New Haven Railroad, and the same thing is true of the social clubs in this city. It is true, I think, of the Panama Canal; it is true of hospitals. This country, as some foreigner said when he was here some time ago, cannot go wrong, because there is no country in the world in which so many people are engaged in service activities, in which the people are inspired by service psychology as they are here. Only when it comes to profit-making corporations, or industry, we immediately draw a line down the center and say, "We can only do this by letting some one, some group, make as much money as possible out of it."

The proposal of the Plumb Plan, as I understand it, and as I have heard it expounded on a number of occasions, and as it is written in the bill proposed to Congress, is only incidentally a measure for enabling the workers to get a higher wage. Personally, I am perfectly willing to see that feature of the plan washed away, except for this reason: It is a symbol, a current symbol, a token—if you will—of partnership. It is a thing that suggests to men, "Here is a means of improving your condition by more effort, by more conscience, by using all of your energies." I like it for that reason.

But an increase of wages is not the essential feature of the Plumb Plan. The essential desire of the advocates of the Plumb Plan is to propose a measure for the operation of all the transportation agencies of the country; not railroads alone, but boats upon the lakes and the rivers; not these alone, but trucks which will go out to the manufacturer and will come to the ultimate consignee, giving a service that will radiate out to the farms as the

telephone or the postoffice does, and eliminate all waste between producer and consumer.

The Plumb Plan proposes a trustee corporation just like any other corporation; it proposes that the government shall buy the railroads by the issuance of its securities against private securities. Now I have heard the suggestion that this is an unthinkable thing because of the burden, the mortgage burden, on the American people from the interest on those bonds. The American people now pay interest on these bonds, and will continue to do so, whether the railroads are privately owned or publicly owned. We escape nothing, unless we escape the interest rates in making the change, and we do probably make a substantial saving of between  $4\frac{1}{2}$  per cent and  $6\frac{1}{2}$  per cent interest on twenty billion dollars, that is \$400,000,000 saved at the start by this conversion.

The Plumb Plan is not a means of turning the railroads over to the workers to exploit; it is not a mere shifting of control from capital to labor. Rather, the Plumb Plan fits in with all of the traditions of America. It fits in with three centuries of expansion and development. It harmonizes with all of our experience, as it does with the foundations of our life. For during these generations men worked for themselves. They owned their own tools. They were impelled by hope. They used their mind as well as their hand. They felt that their contributions redounded in part at least to their own advantage. They were only incidental wage-earners. They were really partners, full partners, in production. And the Plumb Plan looks to the awakening of the same kind of hope among the workers; it looks to dignifying them, to elevating their self-respect, to freeing them and calling forth their imagination. This is one way to stimulate productivity. This is also one way to end strikes. For men do not strike against themselves. Partners do not strike against one another. And with 2,000,000 men organized, as I believe they could be organized, to think of transportation as a collective enterprise dependent upon the good will of the community as well as on the contributions of the employees, the frictions and conflicts which now exist would tend to pass away while the motive of operation would be service to the community. For it would be through the best and cheapest service that the earnings of the railroads and the earnings of the men would be most rapidly increased. Irrespective of other considerations the freeing of

2,000,000 men from the wage relationship and the adding of this great army to the groups of men who have some economic stake in their work would be a gain of immeasurable value to the democracy of the country.

## SOME PRACTICAL ASPECTS OF THE RAILROAD PROBLEM

IVY L. LEE

Formerly Assistant to the President, Pennsylvania Railroad

HAVING had the privilege last night of sitting next to Mr. Doak at the dinner, and having listened to him this morning, I can only say that I wish our labor men in this country could continue indefinitely to be led by a man of the conservatism of view which he shows. But I would like to say this, with reference to some of his history: Mr. Doak repudiates the thought that the passage of the Adamson Law was due to the railroad employees. I shall not attempt to characterize what happened, but I recall the events, about like this:

A deadlock had arisen in New York, out of which a strike seemed probable within a very few hours, and then both sides were summoned to Washington by the President. Another deadlock resulted. The railroad managers proposed arbitration which was declined by the men; a strike order was sent out, effective, I think, the following Monday morning. The President thereupon appeared before Congress and stated to Congress that unless an act was passed embodying substantially the demands of the men for an eight-hour day, a strike would take place within a few hours.

Dropping all other business, while representatives of the Brotherhoods sat in the gallery and looked on, Congress, in almost continuous session, was able to get through this law, and have it passed and signed by the President, I think on Saturday afternoon, when the strike was to take place on Monday morning. Immediately after the law was signed, the strike order was withdrawn.

I have the most profound respect for Mr. Howe's sweetness of spirit and idealism of hope. I have heard him speak on other occasions and wish sincerely that I could share the idealism with which he looks out upon humanity.

To think of that Elysian system under which a well equipped railroad, sympathetically conducted, would be at the service of every farmer, in every remote part of the country, with a special train ready to carry his products immediately to the market in

which he would obtain the highest prices for his goods,—is a beautiful picture! And then when you think that this great service is going to be at your disposal somewhat like an elevator in an office building, free of use to all, without thought of profit to anybody, a sympathetic instrument placed at the disposal of the farmer or the merchant, it is beautiful. But let us apply a little practical thought to it.

Suppose you have a railroad system organized for “service” and not for profit. Who is to determine what and where the development of that railroad shall be? Admittedly we are a long way from having a complete railroad system in this country. Are we going to have our railroads developed by the log-rolling methods of Congress, under which Congressmen from remote regions of Oregon will bargain with Congressmen from the country districts of Maine, to have railroad development take place in their respective districts? Or are we going to do the practical, sensible, business thing, and that is to say to the money markets of the world: “The field of American development is open, and if you will risk your money we will give you a chance to realize a legitimate profit upon it.” You apply then the acid test of results to the judgment of the men who suggest solutions of your problems. It seems to me that is the practical way we must look at the matter.

But Mr. Howe says it would be a glorious thing, and he believes in America enough to believe that if the railroad employees were simply working for service that we would have a great railroad system. Now I have never, in all of this talk about service, heard anybody suggest that the railroad operatives should deny themselves anything while providing this service.

We have heard so much about the profit to the capitalist, the profit to the security holder, the profit to the one who takes his savings out of the bank and risks them in railroad enterprises; the profit to the one who, if the enterprise is a failure, loses everything, but who, if the enterprise is a success, must get unlimited profit. But we hear very little about the railroad operative who, under such a system as is suggested by Mr. Howe, and as provided for in the Plumb Plan, would have opportunity to get unusual or undue profit in the form of wages or salaries.

I want to use terms now that I do not mean to be offensive; but I do think it is important, when we object to the capitalist profiteer, that we shall have no less objection to the labor prof-

iteer. And a man who gets fifty per cent more for a day's wages than his service really entitles him to, is just as much a profiteer as the capitalist who gets fifty per cent more than he is legitimately entitled to.

I won't attempt to discuss in detail Mr. Howe's figures with reference to the Government operation of railroads. I would simply like to refer to one item. He called attention to the fact that we had 145,000 new railroad employees, and that that accounted for a large part of the wage increase. Mr. Besler alluded to the fact that the wage bill of the railroads increased from about three million dollars a day in 1916 to seven million to-day. That is an increase of  $133\frac{1}{3}$  per cent. An increase of 145,000 employees is an increase of eight per cent, so you have had an increase of eight per cent in your employees, and an increase of  $133\frac{1}{3}$  per cent in your wage bill. Those figures, of course, speak for themselves.

I will refer to only two other points. Mr. Besler stated, and stated very wisely, that the real demand of railroad labor is the certainty of fixed wages, and I think in that statement he emphasizes two points—not alone that the wages shall be right, but that there shall be certainty of those wages. To me the great fundamental evil in our whole system of wages to-day—if you will allow me to say so—is the absence of the certainty.

To-day everybody is employed, but we know perfectly well—and no one would agree with this more readily than Mr. Besler—that we have to look forward to a time when railroad traffic will fall off, when locomotives will be stored, when cars will be stored, when there will not be the work for the men to do, and when the men will have to be laid off. Now, that is the fundamental evil of our system, and the great desideratum at which we should aim is some kind of plan whereby in profitable, good times we shall lay aside a certain surplus out of our earnings, which will make certain that the men will be employed in bad times.

Just one other point: I heard last night, one of the speakers—the last speaker, Mr. Shea,—say that his fundamental objection to the anti-strike clauses of the Cummins Bill—and I want to say I agree with the reasoning of Mr. Doak on anti-strike legislation—and the objection of so many people, was that they had word that there was a conspiracy planned on the part of the railroad managers of the country, when the private management was restored, to reduce railroad wages..

It is unfortunate that statements of that kind should be made. Any such allegation is, of course, preposterous. The facts are, as Mr. Besler stated, that in the course of events prices will come down, there will be less work to do, and wages will inevitably come down; but that there is a conspiracy planned is a statement that ought not to need characterization. I have the pleasure of rather intimate knowledge of the operation of the railroads in this country, and intimate acquaintance with many of the men who make their policies, and I know, of personal knowledge, that such an idea as that is as foreign to their minds as it is foreign to your minds that this building will catch fire.

Let us discuss these questions in the light of reason, intelligence and conservatism, such as Mr. Besler and Mr. Doak showed, and not see red all the time, as some people are inclined to do.

## DISCRIMINATIONS

WILLIAM CHURCH OSBORN,  
Lawyer, New York

**I** AM not appearing before you today in my usual Saturday character of a farmer, although as such I might pass my compliments and kind regards to those who have so greatly increased rates upon my products. Nor am I coming before you in the character of a consumer, although as you know, each and every one of you, we might have a word or two to say to these railroad men concerning the prices that we have to pay for what we eat and what we wear. I am coming before you, as the program puts me down, as a lawyer; simply a plain lawyer who wants to analyze the facts of the railroad situation a little for your benefit. The statements are not what I think ought to be, but what I think is and will be.

For the last thirty years the process has been coming on with increasing speed, of changing the railroad business from a private industry to a public service system, and with all due respect to Mr. Lee, I think that so far as capital is concerned, the process has become complete. The right to manage the railroads and the right to make a profit out of a railroad investment have substantially been taken away from capital.

In my judgment, the temper of the people of this country, as shown by the attitude of Congress and of the Interstate Commerce Commission toward rates and by the repeated elections in the matter of street car fares, is that they do not propose to permit capital to make a profit out of a public service enterprise.

If no profit be allowed, then railroad capital in the United States will have to be hired by the public, hereafter, at such a rate of interest, with such security as the private investor will be determined to demand. What may be done with the existing capital? What sacrifices may be made of it? That in my judgment, will depend very largely upon the point of view which the public will take of how they are to obtain the capital to be subsequently needed.

We must, therefore, discriminate capital out of the game. I do not mean to say there is not going to be a lot of money made

out of the ups and downs of stocks, but from the standpoint of putting your money into a new railroad enterprise and expecting to make a profit out of it, take the advice of an aged and somewhat weary citizen on that branch of the subject. Don't.

Now, assuming that capital is down if not out. How about labor? Is labor in a public service industry on the same basis as labor in other industries? I am not sure; perhaps it is. There is this great difference, however, between a railroad employee or a postal clerk or a policeman and the employee in a productive industry. One owes a service, the other produces a profit. Strictly speaking, I cannot see that there is any such thing as "profit" in a public service industry where the rates are fixed by law. So-called profits are only savings. Hence the employees can receive for their services only what the public allows them in rates. Such employees can hardly be considered as partners.

When the Adamson Law was passed, it was in effect a request by the railroad employees, "Make me as one of thine hired servants." They accepted the Government as the arbiter of their destinies, as the fixer of their compensation, as the determiner of their position in the labor world, a very marked and fundamental change in the attitude of labor. Now, you see the railroad business is different from a business that produces. The railroad business has really, I think—as a public service business—come down to hired capital, and has got to come down to hired labor, for the reason that the prices fixed are fixed by the public.

It seems to me there is a distinct discrimination there between a public service business and any other kind of business. I am not very clear about it, but that is rather the view that has come to my mind. If that is so, are there not some serious implications with regard to the Plumb Plan, with regard to the right of the employees in a public service corporation to strike, with the relation of those employees to other branches of industry in the United States? I rather think there are. I rather think that the great public, the 98 per cent public, has interests more important than those of the 2 per cent railroad crowd.

I will tell you in brief, what I think of the situation, because I have only a moment to spare. I am inclined to think that the railroad employees should be compensated somewhat more highly than employees doing corresponding work in other branches of life. Although they have the advantage of permanency, and all but about 10 per cent have the advantage of living at or near

their own homes—I mean all except the trainmen, who constitute about 10 per cent of railroad labor—and although the railroad service, believe me, is the most interesting and fascinating service in the world, putting aside all of those considerations I still feel that railroad employees should have a somewhat higher compensation than other employees, because of the great importance to the public of maintaining that service upon the highest standards. Justice, accurate and complete justice, should be done to railroad employees, but injustice should not be done to other classes of the working people of the country. And that would be an injustice if they were placed upon an unbalanced scale, so that one class rose way above the others.

I think, consequently, that the adjustment of railroad wages is likely ultimately to take the form of a determination by a national board of a proper scale of railroad wages, taking into account not only the requests of the railroad men, but the average scale of wages in other industries throughout the United States. And that board, which I think is likely ultimately to be created, will require the wisdom of Solomon, the patience of Job, and the meekness of Moses to carry it through its task. How else are we to do it?

Mr. Shea last night, and Mr. Doak this morning, were very determined that the right to strike should be retained within their control. They were equally assuring that it would never be used. How else then, unless we are going to have the old fashioned system of contest, are we going to determine—we consumers, lawyers and farmers—how are we going to get adequate railroad pay adequately and properly determined unless it goes before some board—intelligent, wise and long-suffering?

Those few remarks are my contribution, if they can be called such, to the subject; a subject which is more likely to generate heat than light, and as I do not feel very warm about it this morning, I hope possibly I may have thrown just a slender gleam of light upon a dark situation.

# THE IMPORTANCE OF THE PUBLIC INTEREST

EDWIN R. A. SELIGMAN

McVickar Professor of Political Economy, Columbia University

THE topic of the final session is "The Railroads and the Public." I shall detain you only a few moments by a word or two of introduction. This is the culminating aspect of our entire deliberations, and it is naturally so because whatever may be our particular interests, those of the public are the transcendent ones. In fact, if only we appreciated the situation thoroughly it would be seen that the ostensible interests of each of the three classes with which we have been dealing are really public in character, or as is said, affected with a public interest.

Let us take, for instance, the relation of the railroads and the shipper which was discussed yesterday. The shipper is indeed interested in securing satisfactory rates, but as was made clear, those satisfactory rates do not necessarily mean the lowest possible rates. A rate which is so low as to spell inefficiency is uneconomical and will soon react upon the public interests and ultimately upon the interests of the shipper himself. It is for that reason that we welcome for the first time in the discussion of the railroad problem the advocacy of an adequate rate, not necessarily of a minimum rate, on the part of the shippers themselves.

The second session was devoted to "The Railroads and the Investor." I prefer that term to that of "The Railroads and Their Owners." Last night, in the enthusiasm of their exuberant exposition, some of the gentlemen spoke of the owners of the railroads, meaning the private owners. Of course that is no longer the present point of view. The time when a man owned a railroad as he owned his shoe factory has gone, never to return. In the largest sense of the term it is the public that really owns the railroads, even though for purposes of convenience and desirability, it may turn over the administration, and perhaps even the control, of these arteries of commerce, to private individuals. Instead of speaking of private owners we should rather speak of the trustees of the public. It is for that reason that I welcome the choice of the term "The Railroads and the Investor." The investor is indeed entitled to a fair return on his investment, but that is a very different thing from saying that the private owner of a railway has indefeasible and exclusive rights

to their operation. So that here also you see that the real interests, even from the point of view of the investor, are the public interests rather than the purely private interests.

Finally this morning we had the pleasure of listening to the discussion of the relation of the railroads and labor. From one point of view that also represented a class interest, a selfish interest. We shall never arrive at a solution of the railway problem if we look at it only from the point of view of the class or the selfish interest. The labor interest, from a higher point of view, is also a public interest. In what can the public be more interested than in such a satisfactory labor situation as to spell not only economy and efficiency in the operation, but also such contentment in the great mass of the workers as will redound to the public advantage in the broadest sense of the term? But on the other hand if better wages and shorter hours are deemed more important by the workers than continuous and satisfactory service, not only will the public suffer, but in the end also the workers.

It is, therefore, for these reasons, that I say we shall never reach a solution of the problem that now confronts us in a more aggravated form than ever before in our history, if we continue to regard it from the separate angles of each selfish and contending interest. We find indeed a homage of lip service rendered to the higher idea by most of the contending parties. The investors say a great deal about their interest in the labor problem; but if they have to choose between adequate returns on their investments and low wages, there is not much doubt as to what they would choose. And labor does precisely the same thing. In the admirable address of Mr. Shea last night we heard some entirely sincere sentiments about the need of safeguarding the property rights of the investor. But, if it came to a showdown between a return to the capital invested and a satisfactory wage for the worker, there is little doubt as to what the decision would be.

What I want to point out in conclusion is that whatever our final answer may be—and I think this afternoon's deliberations will help us to come a little closer to a final decision, because this afternoon we are looking at the question, not from the point of view of any one of these three contending parties, the shipper, the investor or the laborer, but from the angle of the real social-economic aspects of the situation as a whole or the wider interests of the community—we shall see that in final analysis it is always

the public that has to pay. If the shipper is charged a high rate, the charges are, in the long run, added to the price of the commodities in the hands of the final consumer. If the investor does not secure an adequate return on his investment, it will necessarily have to be supplemented by some form of public aid. If the capital is not forthcoming, the railroads will not be built. We shall need, in addition to the twenty billions of capital that we now have, at least another twenty or thirty billions, before our railway system can be declared complete. If this is to be provided by private individuals, and if the investor does not get an adequate return from the rates and fares, it will have to come from the public, either in the shape of a guarantee of interest or dividends, or in the shape of a definite subsidy to make up the deficit. In either case, it is the taxpayer, the public, that will ultimately pay.

So again with the laborer. I think that the working men have made one essential and new contribution to the topic. We are all pleading for an automatic adjustment of the rate situation so that the investor will not be prejudiced. We have not yet worked out a plan, under private ownership and management, of an automatic adjustment of the wage question. The fears which, as we have learned, permeate the railway laborers today are all reducible to the lack of any such system of automatic adjustment. But if we have such an automatic adjustment, and if wages continue to rise with the cost of living, here again it is the public which must stand the burden. The investor certainly cannot do it. The public has got to do it, either through increased railway rates or through taxation to meet the deficit. And if the Government should finally be compelled to manage the railways, with a consequent probability that the profits of private management would be dissipated through an increase of ordinary expenses, we should be confronted by the same situation that we find in other forms of Government enterprise. We must choose between a higher rate to the shipper, which ultimately means increased prices to the consumer, or higher levies on the taxpayer. Accordingly, it is quite clear that after all it is the public interest which is the paramount interest and that all the contending and conflicting demands of supposedly antagonistic classes must be reduced to the higher synthesis of the public interest. From this point of view I think we shall all look forward to hearing the contributions of the day.

## THE RAILROADS AND THE PUBLIC

FRANK H. SISSON

Vice-President of the Guaranty Trust Company of New York

ONE of the chief limitations of our particular form of democracy is that the course of legislation is too often determined by special interests at the expense of the general interest. An aggressive and well organized support of or opposition to proposed legislation, even though entirely selfish in purpose, in too many instances determines legislative action in matters in which the public interest receives scant consideration. One of the wisest things Theodore Roosevelt ever said was that "the public won't take its own part." In no field of public interest has this been more apparent than in that of transportation. For a quarter of a century the railroad business in the United States has been a battle-ground for conflicting special interests. Investor, shipper, politician, and laborer have contended in turn for the privilege of exploiting the railroads for their own advantage, without regard to public considerations. Each in turn has won victories at the expense of the public, which the public has suffered much too patiently.

With the whole railroad question laid upon the table for fresh determination, it would seem that the time is opportune for the public voice to be heard and the public interest established. It might be assumed that this course of action would be taken by a Congress elected to represent the whole people, but the experience of the past does not warrant this assumption in the process of either legislation or regulation. The marvel of the situation is that, in spite of the conflict which has been waged over the railroads, they have continued to serve their public so well, at the lowest cost, with the lowest capitalization, and the greatest efficiency of any railroads in the world.

### *Public Stake Paramount Consideration*

I feel warranted in stating that there is nothing whatever in our own experience with public ownership in this country, or in the experience of other countries, to justify an argument that it would secure better results, so I return to the conclusion that the alternative is private ownership under public regulation, but

under a public regulation conducted primarily and as completely as possible in the broad public interest. To obtain that result, it is essential that there may be a larger appreciation of the meaning of transportation in the life of our people and of the high importance of its fair and constructive treatment.

The greed of either capital or labor, the ambitions of politicians seeking an issue, the selfishness of shippers fighting to save dimes and losing dollars, the prejudices of theorists—the mistakes of the past and the animosities of the present—should not be allowed to interfere with the solution of the problem. The public stake in this situation is greater than that of any or all of the parties directly concerned and must be protected. Furthermore, the very protection of the public's interest implies justice and fair dealing to all, which cannot be assured by any other policy.

I think it may be fairly argued that the future prosperity of the people of the United States is dependent upon adequate and efficient transportation. Without proper distribution both producer and consumer must suffer. Adequate transportation cannot be obtained without credit, credit cannot be secured without earning power, earning power will not be sufficient without fair rates and just regulation.

Or, to approach the proposition from the standpoint of labor, efficient transportation is not possible without competent service, and competent service is impossible without fair wages and working conditions. Fair wages cannot be paid unless warranted by earning power, and earning power would be inadequate without fair rates.

Again, to approach the problem from the standpoint of the shipper, there will not be adequate or efficient transportation to bear his goods to market unless rates are high enough to command sufficient credit to invite capital, and pay sufficient wages to attract labor.

From every standpoint, we revert to the question of rates and, as the determination of that question lies in the hands of the public, through its duly authorized representatives, the correct solution of the problem depends upon the public understanding of it. The chief danger of the situation is that the public, through failure to understand and appreciate the importance of the problem, may permit a solution, in whole or in part opposed to the general welfare, to be worked out under the pressure of selfish interests.

*Roads Vital to Domestic and Foreign Commerce*

Our railroads should be taken out of the field of exploitation into that of sound economics. They present a business problem to a business people, and should be accorded a solution conceived and worked out in the same spirit as our banking system.

To-day this problem assumes even a greater importance than in the past, because of world conditions. The markets of the world lie open to American commerce and industry. If we can produce and distribute our surplus products economically so as to meet the competition of the world, we can continue American prosperity.

No factor enters into this opportunity of greater importance than inland transportation. The railroads of this country must be able to furnish the transportation which will assure the production and movement of American goods, if we are to be factors in the world's trade. Such efficiency will demand many millions of new capital, scientific regulation and operation, and the elimination of the waste and the friction which have been forced upon the railroads by governmental interference.

New capital can be attracted only upon the basis of adequate earnings and fair regulation, assuring a return which will make railroad investments and operation attractive. Neither brains nor money nor labor can be commandeered into such service or obtained without fair compensation. The railroads must have more partners and fewer creditors, more friends and fewer class exploiters.

Unless the United States safeguards its position by sound business practices, Europe liberated from war and quickened by its necessities, eventually will again command international commerce.

A non-political banking system has met our great test. Our next great step in economic progress should be toward a non-political railroad system. Only upon such a basis can we hope to maintain our prosperity through our ability to market our products. I would reëmphazise this point. Every farmer, every manufacturer, every laborer, every business man in the country is vitally concerned in efficient transportation as the first necessity of commerce.

*Most Vital of All Factors*

But if no other factor were considered by the public, the relationship of the railroad problem to the cost of living should

arouse the keenest general interest and force an expeditious, satisfactory solution of the problem. Unfortunately, however, there seems to be an insufficient understanding of this vital factor by the majority of our people. The railroad brotherhoods, it is true, have recently attempted to call the public's attention to the connection, but they have distorted the facts to serve their own selfish purposes.

In opposing the Esch bill, the brotherhoods allege that it will validate eight billion dollars of "watered" railway capital and compel the companies to pay dividends on "shadow dollars." The spokesmen for three brotherhoods contend that the increase in rates which will be necessary to pay these dividends will "take one billion dollars away from the shippers and add from three to five billions of dollars to what the consumers pay for the necessities of life."

It is significant to note that the leader of one of the four brotherhoods declined to sign the statement in which this absurd assertion was made, frankly stating, according to report, that he did not believe the cost of living would be increased by such an amount.

As to the allegation regarding "watered" stock, it is a well known fact that since 1907 the railways have kept their accounts in the manner prescribed by the Interstate Commerce Commission, and that in the twelve years which have elapsed there has not been and could not have been any so-called "watering" of stock. If there had been eight to ten billion dollars of "watering" prior to 1907 it would have been necessary to build the 230,000 miles of railroads constructed up to that time at an average cost of only \$22,000 a mile, which was not possible—and the leaders of the brotherhoods know that as well as anyone else. The real fact is that on any fair basis of valuation there is not a dollar of "water" in railroad capital as a whole.

We must bear in mind that a very large part of the savings of the people of this country is invested in railroads, directly through ownership of stocks and bonds and indirectly through the investments of savings banks and insurance companies. Railroad credit, in fact, is at the foundation of all American credit; and railroad credit can be maintained only by allowing the railroads living rates out of which a fair return can be paid on the investment. At present the return on property investment derived from earnings of the controlled roads bids fair to be only

about three per cent, which is not only far from fair but actually a starvation rate.

It is worth noting, in this connection, that only a half dozen railway stocks now sell at par, and it has not been possible to issue a single share of new stock this year and only a very little in the last five years, although industrial stocks have been issued to the extent of more than a billion dollars. Railway shares which still pay seven per cent dividends are at a discount of from ten to twenty per cent. And under such conditions railways can finance themselves only by borrowing, and then only under exceedingly disadvantageous conditions.

### *Effect of Rates on Living Costs*

There need be no fear of materially increasing the cost of living by allowing railroad capital a living wage, for increase in freight rates have but a slight effect on the general cost of living, as compared with other factors.

This is demonstrated, to cite only one specific example, by the fact that the item of transportation, computed from the shipping of a steer on a ranch to the selling of a pair of shoes in a retail store, enters into the cost of shoes only to the extent of twenty-five cents a pair. So, railway rates cannot be held responsible for the increase in the selling price of shoes which formerly retailed at \$5 and now cost \$12.

The cost of living began its sharpest increase late in 1915. Taking September, 1915, as parity for the wholesale price of all commodities, it is found that in July, 1917, it had reached 187. No material increase in the average freight rate of all commodities took place until August of 1917. Thus the advance from parity to 187 in the wholesale price of all commodities had taken place with freight rates practically unchanged. Freight rates advanced in August, 1917, and from that time on the increase in commodity prices was very gradual, reaching only 197 in February, 1919, an increase of only 12 points over the price in July, 1917. This would indicate that the cost of living gained its greatest headway without any increase in rates, and that this headway was not maintained at the same rate when freight charges became heavier.

The average commodity value per ton of freight carried by the railroads in 1919 has been \$119, as compared with \$56 in 1914. The average freight charge per ton has been \$2.80 this

year, as against \$2 in 1914. The percentage of the carrying charge to the value of a ton of freight has been 2.4 per cent, as contrasted with 3.6 per cent in 1914. But the increase in the cost of the average ton of freight over that of 1914 has been \$63, while the increase in the freight charges per ton has been only 80 cents, a mere pittance—and the relation of freight increase to cost increase has been only 1.3 per cent.

To sum up, out of the average increase of \$63 in the cost of a ton of freight in the five-year period of 1914 to 1919 only 80 cents was caused by increased freight charges.

These statistics unquestionably prove the negligible influence which transportation costs exert on commodity prices, and they certainly sustain the contention that a fair increase in freight rates would not materially increase the cost of living.

On the other hand, if adequate rates are not granted and the railroads are brought to the verge of bankruptcy, with the impaired service which such a plight would necessarily entail, the cost of living would inevitably mount still higher, because increased production—the only way prevailing prices can be reduced—would be impossible, due to decreased distribution facilities for raw materials; and even if possible, by virtue of some miracle, it would be in vain owing to the lack of sufficient means for distributing additional products.

#### *Government Control a Heavy Financial Burden*

There is growing agitation for reduced taxation as a means to lower the cost of living, but it is curious that in this connection little thought, apparently, has been given by the public to one of the important causes of heavy taxation, Government control of the railroads. While the net profits derived by the Government from operation of the railroads in September were \$3,390,000, the Eastern carriers earned in the first eight months of this year only \$114,000,000, as compared with a standard return, guaranteed by the Government, of \$231,000,000. In other words, the Government must pay the difference, which amounts to \$117,000,000. The earnings of the Southern roads, during the same period totaled \$50,000,000, as compared with a standard of \$89,000,000, making a deficit of \$39,000,000 for the Government. The earnings of the Western roads in the first eight months of 1919 amounted to \$163,000,000, or \$79,000,000 less than the guaranteed return. The grand total of the deficit of the

three groups from the first of the year until the end of August was \$235,000,000, which must come out of the taxpayers' pockets. The total operating deficit of the roads under Government control at the end of the calendar year is conservatively estimated as likely to be not less than \$300,000,000, while the total deficit for the two years of Government operation promises to be not less than \$500,000,000.

In this connection it is interesting to note that there has been an increase of 11 per cent in the number of employees of the roads under Government control, and an average increase in unit of compensation of 53 per cent.

These facts and figures have a far greater significance than merely to show that Government control of the roads has been expensive, when due consideration is given to their bearing on the future of the roads.

Organized labor has served notice that it will not consent to a reduction of prevailing wages. The Anderson amendment to the Esch bill was the first attempt to enforce that decree through legislative channels, for that amendment, if enacted into the railroad law which Congress is now framing, would serve to perpetuate the high wage scale put into effect on the railroads as a war measure to meet the high cost of living.

The amendment provides for the continuation of the Railway Adjustment Boards, created by Director General McAdoo, and provides that the wages which have been fixed by them shall stand. Furthermore, it provides that these cases in which the existing high wages were fixed shall not be reopened except with considerable difficulty and red-tape procedure favorable to the brotherhoods. The possibilities of these provisions are so obvious as to need no comment.

But it is absolutely certain that the railroads cannot maintain the present wage scale when they are returned to private management and the United States Treasury—or, in other words, the money of the tax-payers—is no longer available, unless the roads are permitted to earn rates commensurate with the service rendered.

#### *Adequate Maintenance Necessary*

Furthermore, the carriers must be permitted to earn enough to maintain themselves in proper physical condition. During the period of Government control they have been under-maintained, largely as a result of the war. In the pre-war period normal rail

purchases by the railroad companies consumed 3,000,000 tons of steel, and including steel track material, railroad consumption of steel was not far from 4,000,000 tons annually. But to catch up with their maintenance requirements, it is estimated, the roads need 5,000,000 tons of steel for rails alone.

It should be borne in mind, also, that orders for new equipment mean more business for scores of industries. So, as the railroads prosper business generally prospers, and, consequently, no business man can allow the railroads to be injured permanently without also endangering his own interests.

### *Hundreds of Millions of New Capital Needed.*

It is plain that in the next few years hundreds of millions of dollars will have to be invested in the railroads. One authority recently asserted that at least six billion dollars of new capital must be invested in railroad facilities within the next three years, if the roads are to be able to handle the country's commerce satisfactorily. Most of the capital must come from the savings of the people, which can be attracted to such investment only on the basis of public confidence in the stability of railway earnings.

We should not forget, in this connection, that the railroads will have to bid for those millions in keen competition with many other borrowers who will be able and eager to pay attractive interest rates. All the world urgently needs American capital, and as has wisely been observed, "investors need not, and will not, be mendicants for the privilege of serving the public." In other words, the credit of the railroads must be restored through enlarged earning powers sufficient to enable railway securities to take rank with the best in the American market.

The paramount question then is: Will the American people deny to the transportation industry the free operation of those basic principles which have developed all American industry, and upon which future American prosperity depends?

### *Service Based on Reward*

Efficient service can be secured only by the stimulus of adequate reward. This is true in the railroad field, as elsewhere. Neither capital nor labor will support any other programme.

Any governmental attempt to own or operate so vast a business as transportation must assuredly fail through the absence of selfish interest as an incentive to achievement, the lack of standards of efficiency, or suffering through failure to achieve them,

assured political interference, delay, waste, vacillation, and hampering limitations.

Political direction of transportation could result only in disaster. The public interest demands a transportation system with a credit which will command the funds of investors and not of taxpayers, an operating efficiency stimulated by the hope of reward, and a construction programme which will develop the resources of the country.

That these results can best be secured under private ownership and private management, subject to unified and sane public regulation, is the only conclusion justified by experience. No theory can disprove the record of facts.

The roads must be saved from these dangers which threaten them and saved immediately. Further procrastination threatens the welfare of the whole country.

### *The Challenge of Socialism*

There is another menace to both the railroads and the country to which the American public must also awake, and that is the proposal of the railroad brotherhoods to nationalize the railroads for their particular benefit. In that proposal, socialism, for the first time in our history, seriously throws down the gage of battle nationally and demands a trial at arms. This challenge, in itself of far-reaching importance in the attempt it makes to control the great service of transportation, is of much greater significance in the definite threat that success in this field will be followed by efforts to secure the nationalization of all industry, or, in other words, a complete socialistic state.

The time has come for the citizens of this country, its business men and its laborers, its property owners and its workers, seriously to face the issue thus presented, if they are not to see their interests ruined and their property confiscated by economic experiments and social hysteria which seem to fill the air. Not since the free silver fallacy arose to threaten American business and progress has so dangerous a programme threatened our prosperity.

This bold effort to take possession of one of the nation's basic and most vital industries for the benefit of a single class, and to the assured detriment of all others, frankly discloses the wide spread of socialistic thought in this country and the danger to American institutions which it implies.

It is inconceivable that, if the American people as a whole really understood the elements in the problem presented, there could be any doubt about their solving it. The most ordinary common sense, awakened self-interest, and knowledge of human nature and human experience should quickly repudiate the fallacies inherent in the proposed Plumb plan. The danger is that public thought will not be quickened to the situation, and, through lack of understanding and organization, legislation may be forced through Congress by means of organized political pressure, backed by abundant funds for propaganda and lobbying, which will work irreparable mischief before the public is aroused to the peril.

### *Interests of All Classes Involved*

Every element in the body politic has a stake in this situation. The man with money and the man without it are equally concerned, and the great middle class, which constitutes the majority, has its all involved. Even the railroad worker, himself, while he would undoubtedly profit temporarily by control of these properties, would in the long run be injured because of the assured failure of the plan and the economic chaos which would follow the working out of this programme.

### *Wall Street As Middleman*

The brotherhood leaders seem to rest under the general false impression that Wall Street owns the railroads and furnishes the money for them. This is true only to the extent that Wall Street acts as the middleman in this situation. The railroads are owned, not by Wall Street, but by the millions of stockholders, bondholders, savings bank depositors, life insurance policyholders, etc., to whom railroad securities have been distributed. Wall Street does not fix the rate for money; that is fixed by economic conditions, and security offerings are based upon the price at which the public will absorb them—and that law would operate just as surely if the Government were undertaking the financial burden.

By what process could the holders of railroad securities based upon mortgages to-day be compelled to exchange these holdings or suffer their confiscation? Indeed, what right would the trustees of fiduciary institutions have to permit such sacrifices? It is absolutely certain that the Government would not have either the power or the right to work out any such financial programme.

*Class Rule and Class Profiteering*

Stripped of all its fine phrases and socialistic rhetoric, the Plumb plan is simply a scheme for class rule and class profiteering. It provides for government of transportation of, by, and for the railroad brotherhoods. There is no modest restraint of profit-sharing in the plan, because it turns these properties over to the employees on a practically perpetual lease under a scheme of control in which they fix the return to themselves through their power over wages, and under this lease they accept no risk of the business whatever. That is borne entirely by the Government, or stated more fairly, by the public. There is no provision for securing a fair rental for the property, no effective control of rates by public authority, and the control over wages lies in the hands of a board that the employees would directly control by a two-thirds majority, and completely control by reason of political influence.

What the consequence may be of this class control over transportation is foreshadowed by the already liberal increases which labor has secured through Government control of railroads, and the large additional advances labor is now seeking. Since 1915 railroad labor has averaged a wage increase of more than 85 per cent; more than \$1,000,000,000 has been added to the wage roll under Government direction, and demands now lie before the Government authorities for increases aggregating \$800,000,000 more. Only a few days ago the Director General of the Railroads submitted to representatives of the four railway brotherhoods an increased wage scale amounting approximately to \$3,000,000 a month.

From the broad standpoint of public interest it seems so obvious as to be beyond argument that the control of this great service of transportation should remain in the hands of the public and not be delegated to any selfish class. That mistakes have been made under previous systems of control, or lack of control, constitutes no proper argument for attempting this radical departure from the assured bounds of experience.

*Only Way Solution Can Be Worked Out*

The railroad situation to-day presents many real problems, but these problems cannot be solved properly in the interests of any class or under threat and force. Only patient and fair-minded study, from the viewpoint solely of the general interest, can

bring a proper solution. The securing of that solution is just as vital to the railroad brotherhoods and to labor generally as to any other interest involved, for after all they are all citizens of the United States, and only as the United States prospers as a whole can they long prosper. Continued prosperity can be based only upon sound economic and political principles, and any venture into other fields must bring disaster to all concerned.

The struggle is on between democracy and socialism. In spite of its shortcomings, we have developed in this country a system under which its people have enjoyed the greatest prosperity of any people in the world's history. To-day all the world turns to us for help, and if we jeopardize not only our own powers of service but also our own national future by departing so radically from the system which has made us great we shall be recreant to both our duty and our opportunity. Individual freedom and the incentive to success, which have built this country, cannot be forsaken without pulling down over our own heads the structure we have so proudly reared. It seems unthinkable that such a possibility could even be discussed, and yet here it faces us, not only a possibility, but a probability, unless the intelligence of the country is aroused to meet it.

On this question of Government ownership of railroads we stand to-day in the first line trenches for the protection of the private ownership of all property. If this position is lost the whole line will be seriously threatened. Men who believe in American institutions, in property rights, in orderly government, must line up in opposition to this attack, or live to regret the day of their unpreparedness.

The railroad problem is the immediate and intimate problem of all of us as citizens, and taxpayers, consumers and producers. If we are not able to solve this fundamental economic question fairly and sanely in the public interest through our duly accredited representatives, we shall have loosened the very cornerstone of our whole economic structure and must be prepared to see it tumble about us carrying disaster to special interest and general interest alike. Democracy faces the test. Can it function efficiently in such a crisis or must it learn the lesson through years of experiment and disaster? That is the question of the hour.

## THE OBJECTIONS TO AN IMMEDIATE RESUMPTION OF PRIVATE OPERATION

GEORGE FOSTER PEABODY

Banker, New York

WE are all indebted to the Chairman for putting so clearly before us the foundation of the discussion this afternoon, which is really the foundation of the whole study we have before us, the interest of the public as being paramount, as being fundamental to the whole question. I wish it were possible that his very succinct expression of that might be put before the minds of the whole public because, as Mr. Sisson has pointed out, the public is indicating very slight interest in this, the most important domestic issue that has ever come before the country.

My excuse for speaking on this subject, apart from my interest in public affairs for many years, is that for more than a third of a century I have been actively engaged as a banker and railroad official, in the construction of railroads and the operation of railroads and the observance of the conditions in the relation of railroads to the public practically, and with reference to the influence in politics, of railroad corporations which, as regulation began to develop more and more, were compelled to be in politics and compelled to be in politics in the most harmful and disastrous way possible, because they necessarily worked more or less underground. They worked to influence the election or defeat of this man or that man. We cannot imagine any more harmful way of having the railroads participate in politics than the way of participation through regulation of the private corporations by the government. The railroads have long been operated for profit with public service as a secondary consideration. We all recall, as was suggested to us last evening at the dinner, the well-known phrase of a very prominent man with reference to the public's relations to the railroads just after he had sold thirty million dollars worth of railroad stocks to some people in Great Britain.

I have observed in my very considerable relations with railroads in every section of this country, Mexico and Canada, that while they do not say so publicly, it is almost of necessity the fact that the operating managers and officials of railroads feel that

legislation in such cases. What the State is to do may act in its character—the public be informed.

I am almost surprised as I talk with some of my associates in this line of thinking, indeed, and as I recall the very interesting carefully considered and extremely studied paper of Mr. Sisson, in which it is said that the business and interests of the railroads require that they be managed without all the technicalities which make public work of service to the financial community of the various railroads. The very real fact is that something like 15,000 miles of our railroads had not arrived at a single station. What sort of condition is the country going to be in? What business are the bankers going to face? What condition are the people going to be in? What business are the banks going to be in? What business are the railroads going to be in? I never knew anything so full of mystery as the position of the banking interests and business of the railroad question.

The United States Senate, in 1890, got an introduction of government ownership for 1890-1891 recommended five years' extension to the government authority that the public might study the question that the government might go forward to develop the railroads of the new features of unification of terminals, of the location of roads, of many other very many grades and around curves and many things other than over city grades and direct routes. There was that in the part of the prominent and leading interests, which unanimous recognition without any effort to develop public sentiment in the question.

I am sure that they do not realize the possible panic that might result from having these railroads under such under the Esch Bill or the Cummings Bill or any possible bill that may be worked out in a very short time. It is something quite too fearful to contemplate and that at a time when our financial resources are being strained when we are told—and it is the truth—that European nations need this one solvent country to help them in the reconstruction of the world.

It is true to say that the public generally is not so very much interested that the banking and railroad interests which ought to know the situation are simply saying "Give them what they want." It is in fact as to whether this railroad corporation in Illinois, the railroad corporation in Colorado, this railroad corporation in Maryland is coming out solvent or not. It is a most striking instance of a strange lack in the resiliency

of democracy. But it is a blind and curious fact a democracy which we had suggested constantly that politics will make it. If the government continues to operate the railroad. What is politics? What is politics in a democracy? Why it is the functioning of the people of the country. The whole people will act the democracy in the form of our government simply for the sake of doing in a common way the things that ought to be and therefore to be done most economically, most efficiently. We do not think of sweeping the street in front of our houses we have the car do it. In the same sense we had not roads all over the country. We got rid of them because they were hindering the development of the industries and commerce and production of the country. A railroad is similar the comparatively slowest development of industrial civilization in place of the slower simpler way. If we have any form of democracy we must give democracy the opportunity to operate with the difficult things. One of the reasons why we have all in this country upon the part of a few which has brought the name 'politics' to be a by-word is that we have had a great tendency to conquer. We have had great opportunities for power from land speculation and other speculations and the fact of this country even the laboring men have been thinking that somehow or other they would have the chance to be Danish Schwabs that they would be Astors or Crokers or some other millionaires by the good fortune of having property where a city came to be or where a railroad came or whatever it may be that makes certain lands specially valuable.

Now we are coming in a period where the women who have not that particular sort of vested interest in life are coming in have a great power and they are coming to have a greater part in the consideration of great problems. What we should have now is some two years or more—five years I believe is a better time—to study this railroad problem that the public may know what is best. If you do not have a really intelligent widespread public sentiment underneath your policy whether it be private ownership or whether it be government ownership, you will have friction and friction will ruin anything. Friction upsets any machine you have. The friction is what you try to get rid of in your motor car, even if it be a Ford which comes the nearest to eliminating friction. I believe of anything manufactured on a large scale, and political and economic friction must be got rid of.

We have had suggested to us by Mr. Sisson's excellent paper the dangers that there will be if we have no increase of rates, and if you observed the detail with which he suggested these dangers you would realize that it is a very complicated proposition that he suggests. Professor Johnson has pointed out to us in a very illuminating and educative way the desirability of having another board of transportation to help regulation. Regulation of a private corporation operated for profit means friction. I have been told by friends in charge of great railroad systems that in the last few years, one-third, sometimes one-half of their time was taken up with attention to the orders from the Interstate Commerce Commission and from the various Commissions in the States in which their roads operated, in order to try to avoid friction, serious friction, financial friction and every other kind.

Mr. Sisson has pointed out to you the difficulty of railroads getting credit. I think Mr. William Church Osborn, this morning, was absolutely right in saying that the public has reached the final point of view as regards the use of capital—it had no more money to lend the railroads. That is true. You have heard that six billion of dollars of new capital would be required for the maintenance and extension of the railroads. I think that is a much smaller amount than should be properly spent. It cannot be raised by any conceivable proper development of government relation to privately owned roads, at any reasonable figure. I am confident of that. What is needed by every interest is time to study and develop all the facts as to where this railroad problem is coming out, as to what will happen under certain conditions, and then have a public sentiment created that will give us a rightly-informed Congress, that will present a bill that will be discussed far and wide.

There are two bills. The Esch Bill has passed the House. The Cummins Bill will pass the Senate with such amendments as we do not now know of. No one familiar with legislation, no one familiar with such affairs, has the remotest idea that either the present Esch Bill or the Cummins Bill will be the bill finally passed. They will both go to a Conference Committee where in secret, as so much of the important legislation of the United States has been devised, a new bill in very many respects, will come out and there will be but a short time for the public to get any idea of its real thought. People will have no opportunity to have a carefully considered and carefully reasoned opinion

as to how that bill will relate itself to roads in Illinois and to roads in New England and to roads on the Pacific and to roads in the South. These regions are all different in their conditions. The cotton business is a seasonal business; the grain business is a seasonal business; the manufacturing is more or less of a seasonal business in New England.

The President then has the problem put before him. Without any clear public sentiment, without any assurance on his part as to how the public will take it, the President is called upon to veto or sign such a bill within a few weeks. It is the most amazing temerity, the lack of interest on the part of the public and the lack of really thorough effort and determination on the part of our great leaders in finance and railroad management, that they should not now ask for time in which carefully to develop the facts as to those details which are of such vital importance to the public.

You perhaps have realized already that I am not in favor of a return to private ownership. After some fifteen years of active relation to railroad management in very considerable detail, as I say, I reached the conclusion twenty years ago that it was not possible without too serious friction to have a government-regulated railroad system privately owned and with profit making related to it. So I believe we shall not go forward with the real progress in democracy until our transportation system is operated without any profit to labor or to capital, but is operated so that the man who has industry, ingenuity and power and initiative to develop and to increase the production of wealth, shall be assured that this wealth, which he is to send here and there in this country and the world, shall be transported properly and quickly and at the cheapest possible rate without any question of preference to any of his rivals.

## RELATION OF PUBLIC OWNERSHIP TO DEMOCRACY AND SOCIAL JUSTICE.

ALBERT M. TODD

President Public Ownership League of America

**W**HAT is "democracy," and what is "social justice?" Before specifically defining these terms, let me say at once: "Democracy is the greatest thing in the world." It was that for which America was willing to enter the greatest war of history, not only in her own behalf, but in behalf of the peoples of the entire world. The President proclaimed in all his official statements, in all his speeches, and in all public documents, before and during the war, that we were called to arms to "make the world safe for *democracy*."

We believed then, as we believe now, that every citizen is rightfully summoned to defend democracy even to making "the great last sacrifice." How nobly and unselfishly our citizens responded to this call is attested by the countless graves of our heroic dead who lie in the soil of a sister republic over the seas, and nearby, "where the poppies bloom in Flanders fields." America's sacrifices for democracy are equally attested by the countless mothers and fathers whose sons will never again cross the threshold to cheer and support their old age; by the wives made lonely in widowhood; by the countless orphaned children never again to be clasped in the embrace of their father; by countless thousands who worked abroad and at home in the Red Cross; and by those other countless thousands whose services were needed to support the Army and Navy with food, clothing and munitions, on the farms and in the factories; and by those who had passed the age of military service and toil, but who gladly contributed money with which to support the needed services.

In view of the pronouncements of our Government, and the noble sacrifices of our people, shall we not recognize democracy as "the greatest thing in the world?"

### *Democracy's Immediate Problems*

We have won the war so far as overthrowing the menace to world liberty, for which a foreign autocrat had inaugurated the

conflict. We have "made the world safe for democracy" so far as American institutions were endangered by foreign ambition; yet, we today face a task and a duty no less serious than that which called us to fight a foreign foe. Our duty today is to make such further sacrifices and to take such further measures, and so carefully study the relations of public utilities to government, as shall bring us into actual possession of that democracy for which our country's heroes made their "last sacrifice," and which we supported by every power we possessed.

Democracy is the foundation of all free and just governments. It includes every civic principle which is the basis of liberty, equality of opportunity, and human happiness. It involves so many phases of human welfare that all cannot be included in this discussion. And since this meeting is considering as its special subject, legislation relative to public utilities, especially the railroads, chief attention must be given to this branch of economic democracy. But before concentrating attention upon this branch of the subject, I desire to call attention to our first great present duty which is to remove from their places of power the forces of "special privilege" which have gained control of those functions of government upon which our economic liberty and prosperity depends, so that we may become a nation free in fact as well as in name.

The problems which we now face and the duty we must meet were stated just fifty-six years ago so clearly and wisely by our martyred President Lincoln upon the field of a great battle near the close of a war which had forever settled the question of human slavery in this country, which, although it is fresh in the memory of all, is so closely related to our present condition and duty that I cannot do otherwise than recall these immortal words:

"It is for us, the living, to be dedicated to the unfinished work which they who fought here have thus far so nobly advanced. It is for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom; that government of the people, by the people, for the people, shall not perish from the earth."

Not only when speaking on a great battlefield, but, also, in addressing a personal friend by letter, this same great President, whose memory we all reverence and cherish, made another utterance equally related to the conditions we face today, saying:

"As a result of the war, corporations have been enthroned, and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands, and the republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war. God grant that my suspicions may prove groundless."

Is there a single American who has carefully studied the growth of the power of those corporations which control our great public utilities, who does not realize that the prophecy of our martyred President has already become largely true?

What really is the republic which the great President feared would be destroyed by the concentration of wealth?

A republic is the citizenship who compose it and who have organized a government, as their agency to operate the mechanism of democracy. Though the government continues to exist in its original form, if it becomes corrupted, and is operated in the interest of a class rather than in the interest of all, the republic is destroyed. There are many thoughtful and genuinely patriotic citizens who are forced to the conclusion that the railroad power, the money power, and the other forces of special privilege which have been born from these two, are now in control of the government, and that the real republic is rapidly moving towards destruction.

In view also of the fact that American citizens who desire peacefully to secure genuine democracy as the reward promised them for the sacrifices they have made, as well as those "whose zeal is not in accord with knowledge," and who advocate force, are alike denounced by "special privilege" upon every possible occasion as "un-American, and anarchistic," I wish to call the attention of the forces of special privilege to the fact that it is they themselves who have been, and still are, sowing the seeds of anarchy, and should our country be drawn into a revolution of force, which God grant may not be the case, those who are seeking through corrupt and illegal means to gain economic control of the nation, will be found to be the chief contributing cause.

If, instead of increasing their unjust, political and financial control, they will join the real friends of progress who seek to promote universal justice, the terrible calamity may be averted. In connection with this, and in order that they may cease from their attacks upon democracy, I quote again from the martyred Lincoln whom they profess to reverence, who said:

"This country and all that is within it belongs to the people who inhabit it, and whenever they shall tire of the existing form of government, they have the constitutional right to amend it, or the revolutionary right to overthrow it."

I have quoted more fully from President Lincoln than would otherwise seem necessary, were it not that these warnings were evoked by conditions which already he feared and clearly foresaw, and which since he made these appeals, have verified his fears. His prophecy already has been in part fulfilled, because special privilege has been permitted to secure the control of our great public functions. To restore Democracy, by nationalizing our great public utilities in the interest of the public good, is the great work now before us.

Similar warnings were sounded 103 years ago by Thomas Jefferson, the illustrious author of the *Declaration of Independence*, when, in a letter to George Logan, he wrote:

"I hope we shall take warning from the example of England and crush in its birth the aristocracy of our moneyed corporations which dare already to challenge our Government to trial, and bid defiance to the laws of our country."

#### *Public Ownership and Democracy*

"Real public ownership is the essence of democracy. Instead of dividing men into masters and mastered, it brings men together in a union of interest, and affords the conditions necessary for the highest traits of conscience and character."

—Prof. Frank Parsons of the Boston Law School, in "*The City for the People*."

A highly important element, and probably the first element of democracy, is the ownership by the people, and the administration by their government of all those great public services necessary for the general welfare, and especially those which either by nature or by law are monopolies. There can be no more natural and just function of government than the public ownership

and operation of those utilities and services which are of universal need for promoting general prosperity and happiness. Among those services are the transportation of our persons, our food, fuel and the various necessities of life both from farms and factories; the transmission of intelligence by telephone, telegraph, post or by any other method which human genius may in the future devise; the ownership and operation by municipalities, of street railways, gas, electricity and such other services as the citizens of any city may deem best publicly to operate.

The principles underlying democracy and public ownership may be divided into two classes. One is connected with ideal government in its relation to civil liberty and equality of opportunity. This we call "democracy," and "political justice." The other relates to providing those material things and services necessary to our welfare and happiness which we call "economic justice." Both are closely interwoven, and together form the sum of human justice which we know as "social justice," a term inclusive of all the relations of mankind in an ideal commonwealth.

Liberty and equality are essential principles of justice or "democracy" in its widest sense, as determined by social inheritance; but to analyze correctly, social relations, a broad comprehension of economic conditions is necessary. It was the desire to study questions of justice and civil liberty which led me many years ago to seek information concerning the great public utilities and their relation to national life and public welfare.

Constant and intimate relations for a number of years with the railway, telegraph, telephone, express and various other public utilities had brought valuable experiences in my business relations as manufacturer and shipper. Investigations carried on while a member of Congress added to this experience facts of an official nature. Repeated visits abroad gave opportunity to investigate personally the conditions under which public utilities were being operated in foreign lands under both public and private ownership. The last visit occupied fourteen months in the year 1912-13, during which time fourteen countries were visited. These, together with those investigated during other trips, included Austria, Bavaria, Belgium, Denmark, Egypt, England, France, Greece, Holland, Italy, Norway, Prussia, Saxony, Scotland, Sweden, and Switzerland.

*Rapid Spread of Public Ownership Abroad*

All of these countries, sixteen in number, publicly own and operate their telephone and telegraph systems as parts of the postal service. Ten publicly own and operate their entire railway systems, four own them in part, while only two (England and Scotland) have been operating their railroads entirely under private ownership. Upon the outbreak of the war, the government of these two countries took possession of the railroads also, and will assume actual and permanent government ownership in the near future. Russia, Japan, Australia, and New Zealand also publicly own and operate their entire railroad systems, while China, Mexico, and the countries of South America own theirs in whole or in part. All of these own their telephone and telegraph systems as well, and many countries own the majority of their municipal utilities. *The United States of America is the only nation in the world which does not publicly own and operate its telephone and telegraph systems as government functions*, and will have the unenviable distinction of being the only civilized country controlled by special privilege, should she alone decide to continue this intolerable system of "invisible government."

This tendency to be ruled by private monopoly led Ambassador Bryce in his American Commonwealth to declare: "In England we have the form of monarchy with the spirit of democracy; while in America there exists the form of democracy with the spirit and essence of monarchy." This statement is unfortunately too true, due to the fact that in England as well as in all the other countries of Europe, public utilities are largely owned and operated by the people, their operation being considered necessary and natural governmental functions. Those few minor undertakings which are allowed to be privately owned in these countries are considered as public trusts which are required to give impartial service and make full accounting to the people respecting their stewardship.

*Public Ownership a Natural Government Function and Necessary to Secure Democracy and Justice*

In America, on the other hand, the private monopolies which own and control the great public utilities have practically become the financial and political masters of the people, for, by means of unjust rates made possible by fictitious capitalization. dishonest

financing, and illegal practices, they have grown so powerful as largely to control law and government. By secret rates and rebates they crushed out competition and obtained monopoly. By interlocking directorates and combination of capital they have controlled or defied law and evaded regulation. Through control of much of the press and other means of public education they have influenced public opinion, largely controlling nominations and elections to public office, and ultimately directing the making and administration of law.

When a few men thus control the great functions of government, that equality of opportunity which is fundamental to democracy can not exist. There can be no function of government more natural and necessary to the promotion of general prosperity and happiness than the public ownership and operation of all those agencies which contribute to the public good and which by their nature are monopolies; and these include not only the public utilities devised by man, but many of those vast resources of nature which the Almighty placed upon and below the earth for the service of all his creatures.

Since our National Constitution was written a century and a quarter ago, human genius has harnessed nearly all the forces of nature in so many ways, that there is scarcely a function in our daily life that is not performed by them, nor a condition of life which they have not revolutionized. Then, we could speak only within the radius of our voices; now, we speak from ocean to ocean. Then courier, stage, or slow sailing boat carried our written messages; now, a few seconds suffice to encircle the globe. Then, our persons and the products of our farms and factories traveled on land at the rate of twenty miles a day; now, our fastest trains exceed a thousand.

As the Creator of the Universe gave to all mankind from the foundation of the world to the end of time, the air, the water the sunlight, the heat, the treasures of the earth with all their powers and possibilities, so it devolves upon the city, the State and the nation to preserve inviolate to its citizens the widest and freest use of these gifts for the common welfare. This cannot be done where private monopoly exists, which permits one man or a group of men to usurp the rights which belong to all.

*"Liberty—Equality—Fraternity"*

When first traveling in the countries of Europe in 1875 to study their social institutions as well as the masterpieces of art

and architecture, and the monuments of antiquity, I observed with interest over the entrances to public buildings and churches in France the words "LIBERTY, EQUALITY, FRATERNITY," the impressive motto of the French revolution, forced upon the world by the tyranny of existing autocracy; and when extending these travels to other countries it was interesting to observe the extent to which applied democracy was enjoyed by the people.

In order to secure indisputable evidence of the success of public ownership with which to disprove misstatements continually being made in the press, I procured during the travels referred to, a large and valuable collection of official reports and data of an absolutely authoritative nature, besides personally taking over five hundred photographs of the various utilities in operation in many countries. To this collection I added several hundred photographs taken by official photographers.

This interesting collection contains street railway tickets from many cities and countries of Europe, with fares of but one cent for moderate distances, and averaging approximately two cents for all distances. These gave superior service, from the receipts of which each city made a large profit applied for reducing taxation or swelling the fund of the "common good."

In England the very highest quality of coal gas was being supplied under municipal ownership, in some instances at rates as low as twenty-five cents per 1,000 cubic feet. And even at this rate a profit was made, owing to honest and efficient administration.

Electricity was everywhere supplied at rates lower than those charged by private companies in America, notwithstanding the fact that in most of these countries there is but little water power.

Local telephone calls were two cents, and phones in homes and office cost less than half the American rate.

Checking of baggage or parcels for storage at the railway stations was only two cents, as against ten cents in the United States. And all these public utilities were efficiently administered and gave a profit to the government. That these rates to the general public have not been established at the expense of the employees we demonstrate below.

#### *Public Ownership Brings Justice to Labor*

The rule prevailing in both municipal and national utilities in countries where public ownership exists, is that labor shall be

paid not less than the full wages accorded by private companies for like service, nor less than the amount fixed by labor unions. In many countries a minimum wage law exists for government employees upon the railroads, telegraph, telephone systems, etc., and this rule exists in principle under municipal ownership in nearly all cities.

Strikes and labor trouble of any kind are so extremely rare as to be almost unknown under public ownership, for the public has no interest nor desire to treat its own "citizen employees" otherwise than with generosity and justice. It desires to receive the best service and is glad to give a full equivalent. The sole consideration under public ownership is to secure to everyone perfect service under just conditions, while under private ownership as practiced in America the sole motive is to obtain private profit; and even where good service is given, the motive remains the same.

Under public ownership, laws and agreements are entered into providing for conciliation, arbitration, etc., by which all questions are usually settled quickly and amicably. Employees being partners in the business and enjoying the public service for themselves and their families have no motive to destroy that which tends to their own welfare. The facts already given would seem sufficient to show that a degree of social justice greater than is known elsewhere prevails where public ownership exists, for the public as consumers secure the necessities of life upon terms far more just than could be otherwise possible, while employees receive better wages and better treatment as well.

It is highly significant that the employees of our railways are unanimous for government ownership and willing to contribute to help make it a permanent success.

#### *Public Ownership in Accord With Our Constitution*

The greatest statesmen and constitutional lawyers of every democratic country agree in the view that it is not only the *right* but the *duty* of government—national, state, and municipal—to perform every function which is necessary to protect and extend the rights, opportunities, and happiness of its citizens. In fact, this was the supreme purpose of the founders of our Republic, and in order to secure and protect these rights they placed at the head of our National Constitution the following preamble:

"We, the people of the United States, in order to form a

more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and to our posterity, do ordain and establish this Constitution for the United States of America."

It must be noted that they sought to provide and secure to posterity—the people of today—all the blessings which accompany civil liberty. They hoped to secure for our people domestic tranquility, which is impossible under private railway control. The other purposes are incapable of being realized under private monopoly of transportation. Should our present lawmaking power refuse in this great crisis to provide, in letter as well as in spirit, progressive legislation necessary to carry out the fundamental principles of the Constitution, there is left an appeal to the citizenship which our martyred President, Abraham Lincoln, stated in the following words:

"This country and all its institutions belong to the people who inhabit it, and whenever they shall tire of their existing government they have the constitutional right to amend it, or the revolutionary right to overthrow it."

If, then, this principle that the will of the people should rule has found its advocates among makers of laws and constitutions throughout the centuries when the conditions of society were more simple than now, and when nations have owned and operated their own highways, post offices, etc., is it not much more natural, necessary, and just, that these same principles of public ownership should be extended under the present and more complicated conditions of society, when the various forces of nature are imperatively called upon to render service? Justice replies "Yes."

We are living in an era of evolution and revolution. Democracy must triumph over greed. That "invisible government" of private monopoly which sets at naught the will of the people through the combined power of the railways, telegraph, telephone, gas, electricity, street railways, and other public utilities, must be done away with in the name of liberty.

*The Publicly Owned Railroads of Switzerland—How the Rights of the People Were Safeguarded from the Beginning and How Federal Ownership of the Swiss Railways Was Acquired*

On the 7th of April, 1851, a special commission of the national council itself made an official recommendation providing for the public ownership and operation of the railways under joint government control (national and state). The national council itself refused to follow the vote of this commission, and in July, 1852, declared in favor of private ownership. The rights of the people, however, were thoroughly safeguarded both in the federal and cantonal law by abundant provisions limiting the rates of charge and profits, and providing that construction and operation should be carried out with honesty, efficiency, and economy, and that the Government at all times should have access to the records and accounts, which were to be kept in a clear and complete manner. The franchises also contemplated, from the very first, the ultimate taking over of the properties by the authorities either cantonal or federal on just terms, whenever the public decided either that the profits of the companies were too great, or that public management would insure them better service; and compelled the companies honestly to advance construction and operation, to give efficient management, and perform the service at just rates; otherwise the nation would at once exercise its rights and acquire the roads for government operation.

The government had by the year 1890 acquired rather a large control by purchase of the majority of stock in some of the most important systems. As the terms for which many of the franchises had been given to the companies would expire in the spring of 1898, the Swiss people invoked the rights which they had long enjoyed through the system of direct legislation, and by an initiatory petition demanded that the council (the members of which were already favorable to this action), should frame a bill providing for the taking over of the most important railway systems and submit this as a referendum to be voted upon at the forthcoming election.

The salient features of this bill were that the government should purchase and take over at the expiration of the franchises, the five important railway systems, approximately 1,700 English miles. The bill thus submitted to the people for their votes included every provision possible for safeguarding the public in-

terests, including the financing, the accounting, justice to employees and users, and with a system of administration founded upon a highly intelligent and practical basis. An administrative council of eleven members was provided who were to keep constantly in touch with the various cantonal governments and give careful attention to the needs of the people.

*Why the Swiss Took Over Their Railways Under Public Ownership*

In connection with the bill which the national council had drafted at the request of the voters to provide for public ownership of the railroads, the national council issued a message embodying the reasons which compelled it to recommend the passage of the bill. Among these reasons were the following:

1. That the unification of the systems under one head would reduce the expense of operation by doing away with useless duplication.

2. Federal operation of the lines being conducted by a single administration could provide for a better trained administrative body than a large number of private companies.

3. Since Prussia, Austria, and other states were enjoying the earnings from their publicly owned railroads which would soon place them out of debt, the Swiss railroads if privately owned could not compete with them in rates, and thus higher charges must be paid by the Swiss people.

4. The federal council also made it clear in this interesting message that continued private ownership was a menace to the political life of Switzerland, because the profits accruing from the roads left the country in the form of dividends to foreigners rather than contributing to the extension and improvement of their own railways.

5. Higher wages, reasonable hours, and better living conditions would be enjoyed by the railway employees under government ownership. Upon this subject the message also says: "Private companies, as a rule, pay high salaries for the performance of certain functions, and to make up for these expenditures they economize upon wages of common employees, who, since they are very numerous, occasion the great bulk of expenditures."

*Public Ownership Submitted By Referendum to the Popular Vote and Accepted By An Overwhelming Majority*

The vote on the proposition for the national acquisition of the railway system was taken on the date fixed by law, February 20, 1898. It called out an unusual number of voters. Out of 734,000 citizens having the right to vote, 570,000, in round numbers, exercised that right. This is the largest proportion of votes ever cast. The purchase law was accepted by a majority of over 200,000, the votes standing 386,634 for, to 182,718 against. The result showed an overwhelming majority in favor of national ownership.

My investigations of the practical working of this national system of railways extending over twenty years, lead to very decided convictions respecting the efficiency of this system in comparison with our own deplorable lack of efficiency. Permit me to give details respecting rates, quality of service, etc.

*Swiss "Abonnement" Tickets and Regular Fares and Quality of the Various Classes of Service*

The Swiss federal railroad administration issued until after the beginning of the present war, "Abonnement" (special season) tickets, good for unlimited travel on all the federal lines (1,701 miles) and on all the steamers of the Swiss lakes (Geneva, Zurich, Lucern, Neuchatel, etc.):

	1st Class	2nd Class	3rd Class
Two weeks.....	\$13.50	\$9.65	\$6.80
One month.....	21.25	14.50	10.60
Three months....	52.11	36.67	26.05
Six months.....	81.56	56.94	40.53
One year.....	129.31	90.71	64.66

Respecting the quality of service of the various classes: The native Swiss ride almost entirely (except the wealthiest) in the third class. It is clean, sanitary, and comfortable, but lacks upholstery. The second class is used largely by the wealthy Swiss and foreign tourists, including Americans, except the very wealthy, and in some cases those who desire to appear wealthy. It is practically equal to the first class in America. The first class is but very little different from the second, and in many cases

the first and second are precisely the same, the only thing which distinguishes them being the label. Both classes are often in the same car, divided with a partition, but the "poster" showing the class is often changed as circumstances require. I usually used the second class. This ticket gave me the right to travel at pleasure for six weeks, twenty-four hours daily if I desired over these highly expensive roads, for \$28.00, less than seventy cents per day! There were always reputable, intelligent and delightful people to meet, and the atmosphere seemed entirely democratic.

For regular journeys the rates per mile one way were as follows: First class, 3.2 cents; second class, 2 cents; third class, 1.6 cents.

The three classes averaged 2.3 cents per mile for single journeys, and for round trips about 1.5 cents per mile each way. Fifty-five pounds of hand luggage are allowed to be carried free in the passenger cars.

As has been already mentioned, the Swiss railways, owing to the country being almost entirely mountainous, and abounding with many chasms, requiring bridges at dizzy heights, and construction of countless tunnels being necessary, the actual cost of construction of the road is many times greater per mile than in any other country. Marvelous engineering feats have been accomplished in the construction of these roads, which have never been executed elsewhere in the world. Among these are wonderful "corkscrew" tunnels in which the trains, after crossing a chasm or canyon over a very high bridge, move around within the mountain, in spirals like those of a corkscrew or coiled springs, in order to make grades that will permit their emerging 200 or 500 feet or more at a point directly below or above the entrance, depending on the direction in which they are going. One of the most famous of these is a double corkscrew, shaped like the figure 8. Of the well known tunnels, the St. Gothard is nine miles, and the Simplon (double track), is twelve miles in length, the two costing \$21,000,000. There are over 1,000 tunnels on the Swiss Federal System.

#### *The Higher Cost of the Swiss Railways and the Lower Fare*

With the unparalleled difficulties of construction in the Alps, the actual cost of the Swiss railways must have exceeded five times that of the average of the American roads, and had they been promoted and financed under American methods the rates

of fare would naturally be five times as great as they now are. But under the honest building and management that the Swiss law required, the fares for regular trips average practically the same as in America, while the "season" tickets are only a fraction of the charges made in our country.

When the government finally took the roads over, about 1,700 miles, it paid for them approximately \$199,000,000, or \$117,000 per mile on the average, including a large mileage of tunnels and bridges averaging \$1,000,000 per mile.

A suggestive account of the purchase of these lines by the Swiss Government was prepared for the Musee Social of Paris, by its Swiss correspondent, Mr. Horace Micheli, a translation of which may be found in Volume III, No. 6, December, 1898, of the American Economic Association. Attention here is called to the protection the Swiss people enjoyed in taking over their railroads under public ownership through the constitutional and democratic right of "direct legislation," with the "initiative and referendum."

#### COMPARISON OF SWISS DEMOCRACY WITH AMERICAN RAILWAY AUTOCRACY

*"Division of the New World"—Two Railway Presidents Aptly  
Calling Themselves "Cortez" and "Pizarro," Believing They  
Had Secured the Control of the American People, Pro-  
posed a Division of America Between Them*

In the investigation of the records of the Louisville & Nashville Railroad Co., letters were discovered between Milton H. Smith, president of the L. & N. Road, and Samuel Spencer, president of the Southern Railway, giving vent to their fullness of joy in having (as they thought) obtained control of America, as had Cortez and Pizarro, of the natives, four centuries ago. This aptly illustrates the illimitable ambition of railway financiers. The following from the letters of these two railroad presidents is extracted from pages 369-372 of the evidence and report of the Interstate Commerce Commission covering their investigation of the Louisville & Nashville Railroad system.

"A letter from President Smith, of the Louisville & Nashville Railroad, to President Spencer, of the Southern Railway:

(Personal and confidential)

On Pennsylvania Railroad Train No. 21,

Samuel Spencer, Esq.,

February 22, 1896.

President Southern Railway, 60 Broadway, New York City.

Dear Sir:

Pizarro.—How shall we divide the new world?

Cortez.—I will take North America and you can have all of South America, except——, and neither of us will do anything to the Isthmus without notice to and coöperation of the other.

Pizarro.—While Patagonia is not a very large or important part of the world, yet, perhaps, it is as much as I can tote.

Refer to typewritten report of our interview at Kenesaw, Ga., on October 28, 1894, and to the interviews and correspondence that have taken place since that date, and to that portion of our interview of this morning relating to the future of certain railroads that are or may be tributary or competitive with roads controlled by the L. & N. R. R. and the Southern Ry.

May it not be well to review the subject and perhaps make our understandings more specific?

Your affairs, since our interview in October, 1894, progressed with rapidity, and without, so far as I know, encountering serious difficulties. You have acquired the G. S. & F., the Atlanta & Florida, and the Central Railroad has been re-organized in accordance with your plans. I do not recall now what has been done with the Macon & Northern, nor what has been done with the G. M. & G., Macon & B'ham, and one or two other roads, altho I believe you told me that your intention was to allow the Macon & B'ham to be abandoned. The Paducah, Tenn. & Alabama and Tenn. Midland Rds. have been disposed of as anticipated. The L. & N. will not compete for the control of the B'ham, Sheffield & Tenn. River Rd., provided you will acquire it, should it become necessary to do so to prevent its extension into Birmingham, or will not permit it to get into a position where it may become a disturber. The L. & N. Rd. will not compete for the control of the Mobile & Birmingham with the expectation that you will acquire it.

\* \* \*

I have advised Mr. Belmont of our agreement that neither party will acquire the property of the Marietta & North

Georgia Railroad Co. without the consent of the other. You may, therefore, freely communicate with him upon the subject, and I assume he will do likewise.

Yours truly,  
(MILTON H. SMITH), *President.*"

"Letter from Samuel Spencer, president of the Southern Railway, to M. H. Smith, president of the Louisville & Nashville Railroad Co.

New York, February 29, 1896.

Mr. M. H. Smith,

President L. & N. R. R., Louisville, Ky.

Dear Sir: Your letter of the 22d instant.

Pizarro.—Since our last conversation, the division of the New World between us has made some progress.

Cortez.—Yes; you seem to have acquired Patagonia, and I have secured a considerable part of North America which touched my former territory, but it seems to me you have acquired a considerable neck of the Isthmus which is the connecting link between us. Was it understood that connecting links which touched both of us should be a matter of consultation before acting or not?

Pizarro.—\* \* \* I agreed that it is desirable to renew the subject and, if practicable, to make our understanding more specific. The principles on which I think this understanding should be based are:

(1) That neither the L. & N. nor the Southern shall acquire lines in the territory of the other, and that lines connecting with or touching one and not the other shall be regarded as in the territory of the one which they connect or touch.

(2) That neither will acquire lines allied by former ownership, lease, or otherwise, to the other, and which at the moment are not controlled by reason of pending reorganizations or other cause.

(3) That neither will acquire lines which connect with or touch both, either directly or thru subordinate or controlled lines without previous consultation and, if possible, agreement.

(4) That neither will foster the construction of new lines or the completion of unfinished ones into the territory of the other, but when questions with reference to such lines arise, we shall proceed by agreement with each other, if possible.

Will you please consider this and say if such a declaration of principles is satisfactory?

\* \* \*

Yours very truly,  
S. SPENCER, *President.*"

The above correspondence disclosing the policy and purpose of our railway executives absolutely to control America is so clearly expressed as to need no comment.

*American Railway Exploitation Under Private Ownership*

The promotion, financing, and administration of American railroads marks a dark but impressive and instructive chapter in our country's history. It is a record of a nation's shame, which can only be fully atoned for when the American people shall have supplanted the "invisible government" of private financial autocracy with real and living democracy, by owning and operating for the common welfare all those natural functions of government necessary for the common good. Then only will America enter into her destiny and enjoy the fruition of the labors and hopes of its people. Further experimentation with regulation under the false notions of the necessity of private control, competition, initiative, etc., must be stopped in the interest of the public welfare.

It is an unpleasant task to bring before the public view the manner in which government, the press, and politics have been corrupted, and the rights of citizens, both political and economic, imperiled or destroyed; yet it is due to the American people that they know the truth, and thus be able to select and apply remedies that shall be safe and sufficient for all time, to protect and advance justice and democracy.

As our country now faces the problem as to who shall own and operate the railways in the future—private interests for private profit, or American citizens for the common good—whether the railways shall control the people or the people control the railways—and since the determination of this question by Congress will be largely based on the manner in which these public agencies have been recently administered, it is important that the history of private operation during the past 20 years be known.

While facts of recent occurrence will be most largely considered; yet it is also important to view the foundations laid many years ago on which modern railroad financing and administration have been built.

*Promotion of Pacific Railways*

About 1850 the government decided to make extensive surveys for a railway system to be built to the Pacific coast. After these surveys had been made at the expense of the nation, a private corporation known as the "Credit Mobilier" was formed for the purpose of privately controlling the vast system of railway transportation planned by the government. The giving over of these rights to this corporation marks the first widely known chapter in the dark history of American promotion and financing of railways. The history of this event is recorded in two congressional reports of investigations covering more than 1,300 pages. The first known as "The Poland Report" (report No. 77 of Select Committee of House of Representatives to investigate alleged "Credit Mobilier," Feb. 18, 1873, 42d Cong. 2d Sess.); and the "Wilson" report, No. 78 of "Select Committee of House of Representatives to make inquiry of the affairs of the Union Pacific Railroad Co., the Credit Mobilier of America, etc."

These disclose most important facts relating to the reckless manner in which members of Congress were bribed or influenced by promise of profit to turn over the building and ownership of these lines to a private corporation. The investigation showed that one prominent Congressman who afterwards became President of United States and two others who were nominated for the Vice Presidency were implicated in the transactions, as well as others. Time and space do not permit the recital of details, and it may be sufficient for the present to quote briefly from the conclusions reached by the investigating committees mentioned. I quote from the "Poland" report:

"But such is the tendency of the times, and the belief is far too general, that all men can be ruled by money, and that the use of such means to carry public measures is legitimate and proper. In a free government like ours we cannot expect the people will long respect the laws if they lose respect for the lawmakers."

The building of the Pacific railroads has passed into history, leaving its dark blot on our national escutcheon, only to be effaced as time rolls on, bringing with it forgetfulness. The later period, though not so notably corrupt in its flagrant and open bribery of government officials, has been equally wicked from the standpoint of its effect upon the economic welfare of our

people. One of the outstanding examples of this period is the work of the late E. H. Harriman, who starting as a small broker, by the manipulation of money and securities, without building any roads or doing any other constructive service to mankind, amassed a fortune estimated at about \$250,000,000.

Such is a brief review of railway promotion in the earlier days. We will now rapidly survey the methods used in more recent times by some of the chief bankers and railway financiers of America whose influence now extends over the entire world in controlling money, credit, and monopolies in all lines of manufacturing and commerce, as well as railroads in the United States.

*Recent Refined Methods of Railway Financing and Administration—History of a Nation's Shame*

During the years from 1912 to 1915 various complaints were made by shippers and the public to Congress and the Interstate Commerce Commission respecting certain illegal practices of five important systems of railways and their resulting inefficiency of service and unjust rates. Accordingly the Interstate Commerce Commission, partly on its own initiative and partly in compliance with resolutions of Congress, made investigations, and issued their official reports of findings, in the years 1913 to 1917, respecting the unlawful practices and financial transactions of five railway systems comprising approximately one-third of the country's entire mileage. The systems investigated by the Interstate Commerce Commission and reviewed herein, are:

The New York, New Haven & Hartford Railroad Co., report No. 6569; date July 11, 1914.

The Louisville & Nashville Railroad Co., report No. 4788; date February 9, 1915.

The Chicago, Rock Island & Pacific Railroad Co., report No. 6384; date July 31, 1915.

The St. Louis & San Francisco Railroad, report No. 5933, January 20, 1914.

The Cincinnati, Hamilton & Dayton Railroad Co., and the Pere Marquette Railroad Co., report No. 6833; date March 13, 1917.

These investigations were made with the most painstaking care possible, covering long periods of time, in which special agents of the commission were employed to secure information and to investigate the books and accounts. Officers of the com-

panies were summoned before the commission and several thousand pages of testimony were taken. The findings of the commission were published in their official reports mentioned, and disclose, among others, the following facts:

The evidence secured by the commission shows that *every railroad company investigated knowingly falsified its accounts*, partly in order to hide expenditures of large sums for controlling politics and elections and influencing legislation and the administration of laws; falsified the accounts respecting capital, expenses, and profits, so that the commission, in many instances, was unable to find for what purpose vast sums were expended; and in many cases the books and accounts were burned by the directors in order to hide, in so far as possible, various illegal transactions. Many of these acts were done, as the records conclusively show, by directors who are well known as among the world's most powerful financiers; yet even though many records were willfully destroyed, the commission was able to secure sufficient evidence in many cases to disclose the names, dates and facts.

In order to place these various illegal practices in systematic order before you and our people, to demonstrate the unregulatable character of this private control of a natural monopoly, and to refer readily to official evidence and the findings of the commission, they may be briefly classified as follows:

1. Extravagant speculations and purchases of worthless securities in the interests of the directors; peculations from the stockholders' money by illegal devices, accompanied by the falsifying of books and accounts and their later burning by the directors.

2. Illegally spending the stockholders' money and property to corruptly influence politics, the press, and public opinion, and to secure secrecy respecting their acts.

3. Acts to secure a monopoly against the public interest by the violation of the laws of many States as well as of the nation.

4. The organization by the railway directors of "fake" corporations, with "dummy" officers to hide the identity of real promoters, and shield them from prosecution.

5. The voting to themselves by the directors of extravagant salaries, in addition to which large sums were taken by some of these officials without warrant of law.

As the corrupt practices, falsifying of records, etc., are com-

mon to all the railroads investigated, the New Haven system investigation will suffice for all. All the extracts from the commission's report are taken verbatim from the records.

No. 6569.—In re Financial Transactions of the New York, New Haven & Hartford Railroad Co.—July 11, 1914.

## “REPORT OF THE COMMISSION TO THE SENATE OF THE UNITED STATES

“By the Commission:

“The Commission has the honor to submit the following report in compliance with the resolution of the Senate dated February 7, 1914:

### *“Scope of the Investigation*

“Public hearings were held extending over a period of 60 days of almost continuous session. Witnesses in a position to have knowledge of the transactions under scrutiny were examined. In the search for truth the Commission had to overcome many obstacles, such as the burning of books, letters, and documents and the obstinancy of witnesses who declined to testify until criminal proceedings were begun for their refusal to answer questions. The New Haven system has more than 300 subsidiary corporations in a web of entangling alliances with each other, many of which are seemingly planned, created, and manipulated by lawyers expressly retained for the purpose of concealment or deception.

“The result of our research into the financial workings of the former management of the New Haven system has been to disclose one of the most glaring instances of maladministration revealed in all the history of American railroading. In the course of the investigation many instances were uncovered of violation of the laws of different States. As pointing to violations of State laws, we have turned over the evidence concerning local occurrences in New York City to the district attorney for the proper district, and the testimony relating to irregularities in Massachusetts and Rhode Island have been laid before the proper authorities of those States. The Commission has also furnished the Department of Justice with a complete record of the testimony.

“The difficulties under which this railroad system has labored in the past are internal and wholly due to its own mismanage-

ment. Its troubles have not arisen because of regulation by governmental authority. Its greatest losses and most costly blunders were made in attempting to circumvent governmental regulation and to extend its domination beyond the limits fixed by law.

"The subject matter of this inquiry relates to the financial operation of a railroad system which, on June 30, 1903, had a total capitalization of approximately \$93,000,000, of which \$79,000,000 was stock and \$14,000,000 bonds. In the 10 years from June 30, 1903, this capitalization was increased from \$93,000,000 to \$417,000,000, exclusive of stock premiums, or an increase of \$324,000,000. Of this increase approximately \$120,000,000 was devoted to its railroad property and was expended for betterments and equipment. This leaves the sum of \$204,000,000, which was expended for operations outside of its railroad sphere. Through the expenditure of this sum this railroad system has practically monopolized the freight and passenger business in five of the States of the Union. It has acquired a monopoly of competing steamship lines and trolley systems in the section which it serves. The financial operations necessary for these acquisitions, and the losses which they have entailed, have been skillfully concealed by the juggling of money and securities from one subsidiary corporation to another.

#### *"Significant Incidents*

"Marked features and significant incidents in the loose, extravagant, and improvident administration of the finances of the New Haven as shown in this investigation are the Boston & Maine despoilment; the iniquity of the Westchester acquisition; the double price paid for the Rhode Island trolleys; the recklessness in the purchase of Connecticut and Massachusetts trolleys at prices exorbitantly in excess of their market value; the unwarranted expenditure of large amounts in 'educating public opinion'; the disposition, without knowledge of the directors, of hundreds of thousands of dollars for influencing public sentiment; the habitual payment of unitemized vouchers without any clear specification of details; the confusing interrelation of the principal company and its subsidiaries and consequent compilation of accounts; the practice of financial legerdemain in issuing large blocks of New

Haven stock for notes of the New England Navigation Co., and manipulating these securities back and forth; fictitious sales of New Haven stock to friendly parties with the design of boosting the stock and unloading on the public at the higher 'market price'; the unlawful diversion of corporate funds to political organizations; the scattering of retainers to attorneys of five States, who rendered no itemized bills for services and who conducted no litigation to which the railroad was a party; extensive use of a paid lobby in matters as to which the directors claim to have no information; the attempt to conceal utterances of the press by subsidizing reporters; payment of money and the profligate issue of free passes to legislators and their friends; the investment of \$400,000 in securities of a New England newspaper; the regular employment of political bosses in Rhode Island and other States, not for the purpose of having them perform any service but to prevent them, as Mr. Mellen expressed it, from 'becoming active on the other side'; the retention by John L. Billard of more than \$2,700,000 in a transaction in which he represented the New Haven and into which he invested not a dollar; the inability of Oakleigh Thorne to account for \$1,032,000 of the funds of the New Haven intrusted to him in carrying out the Westchester proposition; the story of Mr. Mellen as to the distribution of \$1,200,000 for the corrupt purposes in bringing about amendments of the Westchester and Port Chester franchises; the domination of all the affairs of this railroad by Mr. Morgan and Mr. Mellen and the absolute subordination of other members of the board of directors to the will of these two; the unwarranted increase of the New Haven liabilities from \$93,000,000 in 1903 to \$417,000,000 in 1913; the increase in floating notes from nothing in 1903 to approximately \$40,000,000 in 1913; the indefensible standard of business ethics and the absence of financial acumen displayed by eminent financiers in directing the destinies of this railroad in its attempt to establish a monopoly of the transportation of New England. A combination of all these has resulted in the present deplorable situation in which the affairs of this railway are involved."

Pages 35 to 41 of the report give a history of the celebrated transaction in which 18 miles of railroad in which Directors J. P. Morgan, Sr., William Rockefeller, and some promoters who

were their friends, were interested, was unloaded by them on the railroad company at a meeting kept secret from the rest of the board of directors, at which meeting President Mellen presided. This property proved to be more than worthless to the stockholders, having been operated at an annual loss of over \$1,000,000 annually, and for which their directors forced them to pay the vast sum of \$36,434,173.25.

The principal accounts respecting this transaction were kept in the office of J. P. Morgan & Co., in such a manner as to hide the purposes for which moneys were received or expended, under the title of "Special Account No. 2." Part of the accounts were kept by another banker interested in the transaction named Oakleigh Thorne, respecting whom the commission report says:

"It appeared during the progress of this investigation that the personal records of Thorne which might have shown all the details of these disbursements had been burned by him in January, 1912."

This transaction is all the more sensational since Mr. Mellen, "president" of the road, was not permitted by the directors who robbed it to the extent of millions of dollars, to know who got the money, or, as he personally wrote in the records, when smarting from the rebuffs of Mr. Morgan: "It seems that as president of the road, I should be entitled to know who got the money for the truck turned over. C. S. M."

*The New York, Westchester & Boston Railway Co.*

The following is from the report:

"The enormous sum of \$36,434,173.25 was expended for a road only 18.03 miles in extent, which is being operated at an annual loss of approximately \$1,250,000, and which will have to increase its earnings four and one-half fold before it can pay its operating expenses and fixed charges. It is inconceivable that this enterprise could have been entered into by the New Haven as a result of the mandates of good judgment and proper railroading.

"The Westchester acquisition was planned and executed by a special committee of the board, consisting of directors Morgan, Rockefeller, and Miller, with President Mellen as chairman. The vote appointing this committee 'on proposed competition between the Connecticut State line and Harlem River, with power,' does not disclose an intention to authorize the

buying of charters and promotion securities and the building of a new railroad, much less one at a cost of \$36,000,000. It is ambiguous and was evidently intended to conceal a secret purpose. The full board was not taken into the confidence of those directors who wanted these securities purchased, and no report was ever made by this committee placing the situation as they found it before the board.

\* \* \*

"The report of this committee, however, was unanimously 'approved, ratified and confirmed' at the meeting of the board of November 8, 1907, at which the following directors were present: Mellen, Rockefeller, Morgan, Milner, Thayer, Brooker, Brush, Warner, Cheney, Miller, Skinner, Barney, Taft, Whittemore, Elton, Hemingway, Robertson, Robbins, and Parker.

"After this meeting of the board at which this undetailed report was ratified, Mr. Mellen went to see Mr. Morgan, and requested more information as to the expenditure of the amounts. According to Mr. Mellen's evidence, Mr. Morgan asked him if he knew who wrote the report, and upon Mr. Mellen's reply, 'Yes; Mr. Stetson wrote it,' Mr. Morgan asked him, 'Do you think you know more than Mr. Stetson?' Mr. Mellen admitted he did not, and apparently acquiesced, but took the precaution to write upon the back of his report, while still smarting under the humiliation of the interview with Mr. Morgan, the following words:

" 'The trouble with this is there is nothing to show who got the money for the truck turned over. I don't like the looks of it, but I don't see why the matter should not be made plain. If I had the stock and sold it, I should expect others would state they bought it of me; but that don't seem to have been the disposition here. I never have known the first thing about who originally held the securities, what they were sold for; and no one thought that I was entitled to know. Perhaps I am not. I would feel better if there were at least a disposition to let me know something more than appears in the record.

"(Signed) C. S. M." )

*Dummy Companies Formed to Hide the Identity of Railroad Officials as to Their Complicity in Illegal Acts and Frauds on the Stockholders*

The following is from pages 45, 60 and 61 of the official report :

*"Dummy Companies"*

"The frequency with which dummy corporations and dummy directors appear in this record leads to the conclusion that some one high in the counsels of the New Haven had an obsession upon the subject of the utility of such sham methods. The directors of the Billard Company confessed that they were dummies and knew nothing of its operations. Why men of respectability and standing as these appear to be should lend their names as dummies passes comprehension.

"In the organization of one of the steamship companies *the young lady stenographer was made president; and a youth of 21 years of age by the name of Grover Cleveland Richards was selected as treasurer of another company.*

*"Clerks and irresponsible persons were drawn upon to supply the demand for dummies in the financial joy rides by the management of the New Haven.*

"Mellen's stock in the New England Investment & Securities Co. was held by James B. Brady, who testified that he was merely a dummy for Mr. Mellen. Director Skinner's stock in this same company was held by a relative and a bookkeeper in his office. Thus, throughout the entire story of deception, the New Haven management vainly endeavored to hide the true facts behind these dummy individuals and dummy corporations.

"As a matter of law, such devices are feeble and puerile, but if the master financiers behind these New Haven transactions could use these sham methods and thus give their indorsement to the availability of such crooked schemes to cover the true substance and fact of financial transactions it indicates a low state of financial morality. No condemnation can be too severe to apply to the frequent use of these companies by the New Haven."

The methods used by this railroad company, the evils resulting therefrom, are summarized by the Interstate Commerce Commission in their report from which the following quotations are made :

*"Evil of Interlocking Directorates"*

"A system of interlocking directorates has grown up and flourished in the past few years which has brought about combinations and intercorporate relationships not conducive to the public welfare. On the New Haven board of directors there was a representative of the Pennsylvania Railroad, which railroad owned 35,000 shares of New Haven stock; there was a representative of the New York Central, which owned 35,000 shares; there was a representative of insurance interests that owned 35,000 shares, and a representative of an express company that had a contract with the railroad; there were directors who were also directors of the Standard Oil Company, the United Steel Corporation, the Pullman Company; in fact, every other interest seemed better represented on the New Haven board than the average stockholder's interest.

"There are too many ornamental directors and too many who have such childlike faith in the man at the head that they are ready to indorse or approve anything he may do.

"The handling of bank deposits and security sales of these corporations are massed in a few hands, carrying with them a power and domination over large amounts of banking capital as well as the control of great railroad systems. These and other evils as the result of interlocking directorates are now well recognized and known, and they have been emphasized by the disclosures of this investigation.

*New Haven Monopoly Corrupt*

"This investigation has demonstrated that the monopoly theory of those controlling the New Haven was unsound and mischievous in its effects. To achieve such monopoly meant the reckless and scandalous expenditure of money; it meant the attempt to control public opinion; corruption of government; the attempt to pervert the political and economical instincts of the people in insolent defiance of law. Through exposure of the methods of this monopoly the invisible government which has gone far in its effort to dominate New England has been made visible. It has been clearly proven how public opinion was distorted; how officials who were needed and who could be bought were bought; how newspapers that could be subsidized were subsidized; how a college professor and publicists secretly accepted money from the New Haven while masking as a representative of a great Ameri-

can university and as the guardians of the interests of the people; how agencies of information to the public were prostituted wherever they could be prostituted in order to carry out a scheme of private transportation monopoly imperial in its scope.

### *Directors Criminally Negligent*

"It is inconceivable that these wrongs could have gone on without interference if the members of the board of directors had been true to the faith they owed the stockholders. A number of directors appear in many instances to have voted without knowledge and to have approved the expenditure of many millions without information. According to the testimony of some of the directors they merely approved what had been done by some committee or by some officer of the company. The directors' minutes reveal that it was largely a body for ratification and not authorization, as the law intended a board of directors should be. None of the directors would have been so careless in the handling of his own money as the evidence demonstrated they were in dealing with the money of other people. The directors actively or passively acquiesced in the efforts of the Mellen-Morgan-Rockefeller régime to extend the domination of this corporation over the whole transportation field in New England.

"If these directors who were faithless to their stewardship were held responsible in the courts and at the bar of public opinion for the failure to do those things they should have done, the lesson to directors who do not direct would be very salutary.

"Directors should be made individually liable to civil and criminal laws for the manner in which they discharge their trust. A corporation can be no better or worse than those who operate it. It should be just as grave a crime to plunder stockholders or the public through a railroad corporation as it is to personally rob an individual.

### *Subsidiary Corporation Condemned*

"It was found in the investigation of the New Haven system that there were 336 subsidiary corporations, and the books of the New Haven road proper reflect only a small part of the actual financial transactions of the railroad. Many of these subsidiary corporations served no purpose save an evil one. They were used to cover up transactions that would not bear scrutiny, and to keep from the eyes of public officials matters that were sought to be

kept secret. The commission should have the power to examine, not only the books, records, papers and correspondence of interstate carriers, but of subsidiary companies as well.

*Remedy in Public Conscience and Laws*

"The insuring of honesty throughout the management of the great railroads of the country is a most important question before the people today, and only when through exposure of wrongdoing and an awakened public conscience, coupled with effective laws, this result is produced, may railroading be placed upon the high level that it should occupy. The revelations in this record make it essential for the welfare of the nation that the reckless and profligate financiering which has blighted this railroad system be ended, and until this is fully done there will be no assurance that the story of the New Haven will not be told again with the stockholders of some other railroad system as the victims."

Government ownership of our railways is desirable; it is practicable; and it is the only democratic and just solution of the railway problem, the great emergency of American reconstruction.

Please allow me in closing to quote from the statement I submitted last February before the Senate Committee on Interstate Commerce:

"If the ideals which we are seeking prevail, service, not profit—democracy, not autocracy, will rule. What we sow today we shall reap tomorrow. We look forward to the time, which we hope may be in the near future, when through the patriotism of our citizens and the continuing heroism of our soldiers, the victory which has come to our arms will here at home consummate an industrial peace that shall be wise and just to all, as one of the first fruits of the great sacrifice America has made in this world struggle. Among the fruits of such peace, those who believe in equality of opportunity, civil liberty and democracy, hold as highly essential the public ownership and operation of our railroads, our public utilities, and our natural resources, for in this way alone can control be 'of the people, by the people, and for the people.'"

## GOVERNMENT OWNERSHIP THE ONLY SOLUTION

W. P. BOLAND.  
Scranton, Pennsylvania

**A**FTER having heard many diverse views on the railroad situation I realize more than ever the need for positive action with respect to our great transportation lines. It is the greatest problem now before the people of the Nation and will, I believe, become one of the leading, if not the central element in the national campaign soon to engage the attention of the country. We must approach this proposition in a definite way. It is a business matter, entirely understandable and absolutely within the compass of the universally recognized principles of commerce and trade. We are not dealing with a mysterious or even uncertain situation. Direct and positive action, taken by men whose training and business capacity fit them for such work, will solve the railroad problem to the advantage of the people of the United States by making the railroad the servant of the people, rather than subject the Government to the service of the agencies owning the railroads.

The time has arrived for us to correct the abuses, now and for some time manifest in the railroad service of the United States. The railroad system of to-day is approximately the collective result of all the work performed in this connection since the first railroad train was moved in this country. The men who formed these different branches of railroads now practically merged, in a physical sense, into one great railroad system, had but limited capital. Their energies made the present system possible and in eliminating many of these men from our railroad service unfair treatment was accorded them.

### *People's Interests Paramount*

We have the railroad system. Let us work now for the general welfare of the people of the Nation. The proposition is too big to be successfully handled by any group or groups of private capitalists. It is Nation-wide in scope, requirements and service, and no agency but the National Government itself can hope successfully to meet this railroad emergency and do justice to the people.

There are so many conditions associated with the railroad situation that one agency in which the people have absolute confidence must take charge. That agency is the Government. Take for instance two railroads entering New York—the Lackawanna and the Erie. The Lackawanna operates about 985 miles and the Erie operates 2,465 miles. It is fair to assume that there is two and one-half times the population tributary to the Erie and depending upon that road for service that there is to the Lackawanna. These people will in the very nature of things be the innocent sufferers of any evil results which may follow the manipulation of the affairs of either road.

You and I may be living in Elmira, N. Y. We may be building automobiles and want to sell our product to the people of Scranton or New York. We apply to the Interstate Commerce Commission for a rate and the first thing the members or agents of the Commission look at is the fixed charges of the company and then a reasonable return on the service rendered. Both roads parallel in the district I refer to. The construction cost is about the same, the equipment the same, but you will find in 1916 an interest charge against the Erie of \$4,699 a mile, and you will find an interest charge against the Lackawanna of but \$7 a mile.

### *Cannot Compete*

How can the Erie, with its interest charges nearly 700 times as great as the Lackawanna's, meet the competition of the better financed road? Is there an agency in this country today which can solve this unfortunate railroad problem but the Government? I am giving you now a sample of railroad financial divergence which has duplicates in all parts of the country. It was contributory negligence on the part of the Government to allow these things to exist and have the railroads of the Nation made the plaything of a gambling Wall Street to the great prejudice of the business interests of the Nation and the people of the country generally.

You cannot reduce wages on the Erie sufficiently to meet Lackawanna competition; and materials and operating expenses on both roads must remain approximately at the same figure. Because of these conditions you put a charge on the shipper that forces him out of business and you penalize all the people. This condition must be met by Government ownership and proper regulation of rates and charges.

The interest of the people—the Government—are always paramount. When liquor men abused the rights conferred upon them by the government, licenses and privileges were revoked. The railroads violated their charter rights, inflated their capital and otherwise heaped fraudulent burdens upon the people and forced the Government to take them over. The Government is not taking this property without compensation, but these manipulators of railroad properties insist on having the valuation fixed at the amount of these inflated values or higher.

### *Capitalization Comparisons*

We know that the Erie has a capitalization of \$182,240 a mile and the Lackawanna a capitalization of about \$42,000 a mile and the Great Northern about \$42,000 a mile. There is no establishment on earth able to handle such a widely diverging transportation problem but the Government.

The Government must handle this situation—readjust charges on an honest basis and wipe out useless and ruinous railroad competition. Where five railroads extend from Chicago to St. Louis two might do the work, with increased equipment, dividing that now in use by the additional three roads and the waste in superfluous management and other such charges eliminated. Under such conditions rates could be reduced and wages increased, allowing a fair return to every honest investor or making the Government returns with Federal ownership in effect entirely secure.

The Lehigh Valley parallels the Central Railroad of New Jersey from Wilkes-Barre to Bethlehem and then both roads use the Reading tracks to Philadelphia. We should eliminate two of these roads, divide the equipment and cut down unnecessary overhead charges. Agencies interested in this needless competition, bankers, money lenders, money gamblers, some lawyers and others, are the elements responsible for this condition. They made the railroads a means to improper ends to the prejudice of the people of the country. This manipulation and juggling of great transportation properties, with the business disturbance and cost to the people, was and is the great crime of this Nation and is responsible for much of the present industrial unrest and commercial instability.

Under the so-called Government control of railroad properties nothing has been more palpable than the efforts of those in charge of the roads to so befuddle the situation as to discredit Govern-

ment participation in this work. There is a persistent effort under way all of the time thus to force these roads back into private hands. The present is no sample of the kind of service which would follow Federal ownership. Competent men would be put in charge. We are a business people and can handle our railroads. In fact the same practical men who handled these roads for the private owners could do similar work for the people, but along more efficient lines, under Government ownership.

Government ownership of all public utilities is coming. Sinister agencies may through fraud, trickery and artifice delay it, but it is the logical way to handle our transportation problem and it will come.

## NATIONALIZING THE RAILROADS

### *Consolidation Accomplished, Competition Ends, and With it Private Ownership*

CALVIN TOMKINS

Ex-Member Inland Waterways Committee, National  
Railroad Administration

**M**UCH has been written about the desirability of private versus public ownership and operation of the railroads, but there has been little discussion of what may be termed the natural history of railway development and its necessary consequence; viz., the nationalization and unification of the entire transportation system of the country.

For more than a year there has been a continuous search for an acceptable way to return the roads to their former owners, but no way of doing so has thus far been found. It is time to ask whether force of circumstances may not compel us to nationalize as other nations have done in spite of a popular wish not to do so, and in spite of temporary makeshifts like government guarantees of profits and like the pending Senate and House bills, which, while pretending to return the roads to private ownership, in reality only make the gesture of doing so.

The railroads of the country were developed by its most experienced minds through a process of intense competition which consciously had one end in view; viz., the consolidation of many roads into a few systems. For fifty years progress was made in this direction—and unconscious progress toward one system. We have reached the conclusion of this process of natural selection under government auspices, because the war precipitated that result, which was inevitable in any event.

Prior to the war, the Sherman Law, which was intended to prevent the consolidation of systems, operated to promote their bankruptcy, because of a policy of starvation which increased expenses without permitting a corresponding increase of revenue. This accelerated absorption of the weaker by the stronger roads. The war demonstrated the defects of the Sherman Law which was scrapped in 1917, and the railroads placed under one federal control for war purposes.

From the beginning, the railroad history of the country has been a record of exploitations, absorptions, expansion and bankruptcies, and then the same processes repeated over and over again, the units being larger each time. It was the lack of guarantees and the risks incurred which made railroad service in the United States so cheap at the expense of the investor. The systems were in truth gradually consolidating themselves under a regime of most intensive competition. The law of natural selection, operating freely, brought to the front the kind of men who developed our railroads and attained such remarkable results in so short a time, culminating in the greatest railroad system of the world.

The competitive conditions which produced men like Vanderbilt, Huntington, Hill and Harriman, admittedly no longer exist. How then is it possible to reinstate competitive railroad organization? Are not the proposed "regional systems," to be equipped with "regional directors," in supposed "competition" with each other, merely camouflaged semblances of the older order of real things which has passed away? Are not the proposed "zones" comparable to the several floors of a single department store, each with its respective floor manager in charge? Is not all this machinery a mere pretense which may obstruct rather than facilitate the operation of a national system already unified?

The government, by general consent, determines freight rates, wages, hours, schedules, routing, joint operation of terminals equipment and ticket offices, safety devices, issue of securities, uniform accounting, and, most important of all, credit—and there is general agreement that these governmental powers should be perpetuated. It is also cooperatively developing water transportation. Aside from the purchase of supplies (a most dangerous function under a government guarantee of profit), what is there which can be delegated to private initiative? The genius of the old time leaders was not exercised under such conditions. The objective for which they consciously and unconsciously competed has been achieved, and it follows that railroad competition is now as much a thing of the past as they are.

Private competition, having achieved consolidation and administrative unity, the old order naturally ends in monopoly either public or private, which is without initiative except as it shall be motivated by the government. Is it not then reasonable to anticipate the nationalization of the railways of the country as a

single administrative unit without prospective profit for anyone, and for the sole purpose of providing public transportation?

In truth, the present issue really is:—How can we substitute for the existing system of mixed government and private control without responsibility, a genuine policy of responsible government ownership and operation? In short, how shall the old owners be bought out and the new machinery set up?

All of the suggestions which have been made for a return of the properties to their owners contemplate a government guarantee of freight rates sufficiently high to provide for interest, dividends and the attraction of new capital. In other words, the demand is for a prospective private-service profit with a government guarantee behind it; and this in spite of the fact that real competition which should be the *quid pro quo* for such a bargain no longer exists and cannot be resuscitated.

Since, as already noted, the government is to permanently assume the essential attributes of ownership, it follows that if the properties shall be returned to their former owners for operation, a guarantee of profits must be assured before resumption of functions can safely be undertaken by them. This will be necessary since they are to take orders from the government as to how they shall operate, what they shall get and what they shall give—except as such instructions may be modified by their power to influence the government and by the power of organized labor and public opinion to influence both them and the government. In all essentials they will be “dummy” operators without responsibility but assured of profits. This outcome, if effectuated, will be as absurd as it will be unpopular and fugitive; for there is no reason to think that Congress will be any more considerate of the rights and privileges of private railroad ownership after the war than it was during the ten years preceding it. Public patience indeed tolerated poor service at comparatively high rates as a public necessity during the war and reconstruction periods. But the railroads were then, and are now being operated as a Government function, and whenever they cease to be so operated the former antagonism against private privileges and even private rights will reassert itself, both in and out of Congress. Except as a figure of speech, the railroads have already been irrevocably nationalized—but not paid for—and what the owners are demanding under verbal cover of a return to pri-

vate ownership is in reality the delegation of agency powers to operate and speculate, with assured profits and no risk.

Is not a government promise that rates shall be kept sufficiently high to recompense invested capital and to attract new capital less desirable than will be a valuation of railroad properties accompanied by a definite guarantee of interest upon them, or an exchange of railway securities for government bonds? The Federal Government must in the end hold the bag under all recommendations which can be made. Why then should it be asked for anything more than a direct interest payment or an exchange of public bonds for private securities?

A guarantee of interest is a simple, direct obligation of the government easily understood, and, if once undertaken, not likely to be avoided. The delegation of the power to initiate rate-making on a basis sufficiently remunerative to provide for all contingencies and to include a profit in addition, will be a more complicated obligation for the government to enter into and one which is much more likely to be avoided by Congress in deference to popular opposition to high rates and special privilege. Profits are elusive and will be attacked and must be defended. Interest payments on railroad securities transmuted into government bonds are definite obligations.

Have not security owners been wrongly advised to demand that the legal basis for rates shall be their vested interest in the roads regardless of changed conditions? Whether the object of this demand is really the establishment of profitable rates, or is intended to establish indirectly by statute a basis of value for subsequent expropriation, the consequence of either motive will be to raise a dangerous provocative issue against railroad security owners who will be accused of attempting to create fictitious profits and values by legislation.

Since the physical valuations of railroad properties thus far reported by the Interstate Commerce Commission are unexpectedly liberal and since the present government guarantees also afford a reasonable basis for expropriation—from the security owners' standpoint, is not the present time more propitious for appealing to Congress to take over the roads than after a protracted, unpopular and doubtful struggle to obtain largely increased rates shall have been gone through with? Director General Hines has stated that rates will not be increased during the period of federal control. Is there any reasonable ground for the belief that what

has been denied during the period of public operation for public use, will be permanently acceded to during a possible period of private operation for private profit? When private competition—that is initiative—stops, private profit should also stop, because no equivalent service is rendered in exchange. All that investors can then reasonably ask or expect, is to get back the just value of their investments after having organized service.

*Profits in Excess of Wages and Interest Not Available for Either Labor or Capital*

The railroad employees' demand for lower living costs or higher pay and the truthful though stultifying admission that higher pay necessarily implies still higher living costs, have served to focus the attention of the country upon the necessity for promptly deciding what shall be done. Perhaps it is as well that the *impasse* into which the railroad problem has brought us should be broken through in this rough manner since apparently little progress towards solving it otherwise was being made.

The interdependent relationship between wages and prices is evident. The working people are the great mass of the population. They are the body of consumers who in fact pay the high commodity prices which are in part occasioned by their exaction of a living wage. If wages go up, living expenses go up; and the wages of transportation workers intimately affecting as they do the cost of all commodities are the most potential of all factors to raise or depress prices. They may in fact be regarded as the keystone of the cost-price structure. Do not the brotherhoods spoil their argument for government ownership by coupling with it a demand for a contingent operatives' profit? Wages must be adjusted at least to the point of restoring purchasing power, but operative profiteers, whenever they show themselves, will be just as objectionable to the farmers, factory workers, city dwellers and voters of the country as are stock exchange and safe deposit (?) profiteers. A government-ownership issue will doubtless be introduced into the next campaign, but it is safe to say it will not prove popular if accompanied by a class-profiteering plan.

The increased expense of operating the railroads, apart from higher material and labor costs is in part the consequence of inefficient functioning and in part the result of a conscious and unconscious sabotage, which permeates the service because no

one's status has been established and the system itself is believed to be temporary. Indeed, we do not now have government operation, but instead a quasi-private, quasi-public operation, one of the recognized objectives of which is to discredit the government and so bring about a return to the old order of things.

As to a division of prospective profits between operators and security owners, to serve as an incentive to efficiency, the answer is that there is small likelihood of profits where there is not responsibility for losses and, if there shall be profits, the operatives will demand them all and probably will get them to the exclusion of the holders of securities and the public. The promise of such profits will also serve as an incentive to conspiracy between owners and operatives and to still further demands for larger profits out of the public.

Since it is admitted that the government will hereafter exercise the essential functions heretofore left to private initiative, since it must undertake compensation to owners for their properties, and pay the highest going wages for their operation, why should it be called upon further to burden itself with profits either for owners or for operatives?

#### *Terminal Integration and Highway Competition*

Improved highway transportation and unified terminal operation at interior transfer cities and at seaports, made necessary by the stress of war conditions, has so completely demonstrated the advantages of integrating transportation functions, that it is probable that integration will be extended and will not be reserved. If so, how will it be possible to unscramble the terminals at the great cities? If the terminals are to be used jointly why not the roads?

It has become the general custom to short-haul commodities between points of origin and destination by motor trucks over the public highways. The advantages of this as compared with the former railway service involving three hauls and two additional transfer handlings needs no comment. Railroad revenues have suffered severely as a consequence of this change, and they will continue to suffer.

#### *Private Rail Profits and Public Waterways Incompatible*

Improved waterway transportation has not yet been permitted to exercise its full influence upon railway communications since

the Federal Government functioning in its present dual capacity as guardian of the public interest and also as trustee for the security owners, cannot with justice permit unrestricted water competition to take effect.

Under pre-war conditions the railroad policy of the country was deliberately and necessarily planned to prevent the most effective utilization of its vast inland and coastwise water carrying systems. As long as the government shall continue directly or indirectly to administer the roads under guarantees of profit instead of acquiring them, its necessity for maintaining railroad revenues with which to meet its guarantees and also its obligation to return the roads to their owners properly safeguarded, compel it in part to pursue the same policy of discrimination against water and in favor of rail transportation which characterized the relations of the railroads to the waterways for fifty years prior to the war. That policy was one of destructive competition successfully directed to the elimination of water transportation except as a potential influence upon freight rates.

No satisfactory joint use of rail and water carriers in such a manner as to realize the full benefits of both services can be had while the two kinds of transportation shall continue to be antagonistic to each other—one private, the other public—or so long as there shall be an obligation to consider the profit and loss account of one system apart from the whole. A single federal control is necessary to reconcile these rival interests. Such control should be complete over the railroads both as regards ownership and administration, and at the beginning, at least, directive over the water routes.

The great water routes of the country are the Panama and West Coast route with its potential joint railroad utilization; the Atlantic coastal route with its similar rail connections; the Great Lakes route with its double water outlet via New York and Montreal and its utilization for combined rail and water service; the Erie Canal system; the Mississippi and Ohio River system; the Black Warrior system and the Chesapeake and Delaware system, including its possible extension north to Boston and south of Norfolk.

The two ocean systems have been effectively utilized as all-water carrier routes, the Great Lakes system has been eminently so developed, and combined water and rail service on these three routes has been as effective as the railroads would permit. Trans-

portation on the other routes, while indirectly tending to lower railroad freight rates, has not been materially advanced because of the obstructive policy which the rail carriers and the government itself for the time being, have of necessity been compelled to adopt toward the water carriers in the attempt to maintain the profits of private rail ownership. While all-water transportation over these routes has been minimized, it has also been made economically impossible to develop the best system of combined rail and water service by which communities away from the water could obtain the advantages of linking the cheaper but restricted water service with the ubiquitous railroad service. There has never been a fair or satisfactory basis for pro-rating combined water and rail shipments. United States railroad rates are comparatively low near and along the waterways and comparatively high traversely to, and away from, them. If railway, highway, and waterway transportation and terminals shall be modernized and used jointly for the benefit of the whole country in conjunction with a fair basis of pro-rating between rail and water carriers, then railroad transportation cannot be conducted as a segregated business.

In this connection, it is urgently recommended that the report of the Inland Waterways Committee of the Railroad Administration, which has submitted to the Director General in the summer of 1918, be now published and studied in its relation to the railway problem.

Until a national cooperative policy between land and water carriers shall have been established, there can be only one safe policy for waterway development; viz., to consider the great inland waterway routes as arms of the sea, upon which transportation shall be freely competitive and unrestricted as to rates and conditions of service. Public funds for physical improvements of channels, locks and terminals must be continuously demanded and also the most favorable conditions for interchange of service with railroads to cities not accessible directly by water must be insisted upon. Only by the cultivation of an imperative public demand for these factors of success can waterway transportation be safeguarded against the adverse attacks of private railroad interests.

The Government has begun to equip the Mississippi River and the Erie Canal with modern fleets which are already in competition with the railways and can under-bid them for coarse

freights. On both of these inland waterways the Government now controls transportation. What then will be the consequence of divesting itself of the control and operation of the railroads? How can it hope to reconcile a public competitive waterway policy, with a private gainful policy of operating the railroads? The Government fleets will be expanded, private boat owners will claim the advantages accorded the Government boats, and the coast-wise traffic will develop a similar conflict of interests, and the clashing of these interests will be disastrous for all, if the Government shall separate the administration of the waterways from that of the railways.

It will be to the interest of American seaports to establish a short-haul movement from the point of origin to the nearest water route leading to such ports whether it be an inland waterway route or a coastal route. No universal rule can here be applied other than to say that instead of giving preference as heretofore to the long rail haul, wherever economies can be shown, a combined rail and water service to the seaport should be made possible.

For instance, southern cotton, coal, lumber and other coarse freights should more generally be forwarded to the New England mill district via a rail haul to the coast and thence, by water to the New England factories which are for the most part located within motor truck distances from tidewater.

Through its control of the eastbound grain business at Buffalo, the Government is now in control of traffic on the Erie canal, because the east bound grain movement is the dominating factor in canal policy. The United States Railway Administration controls this New York State waterway by this means, just as effectively as it controls the traffic through the Panama canal. The automatic influence which the Erie canal formerly exercised over railroad freight rates is consequently now vested in the United States. The Government has in this matter assumed a heavy responsibility which will be greatly complicated if the railroads even temporarily go back to private operation.

Is it probable that the public opinion of the country will tolerate a discontinuance of highway, waterway, railway and seaport terminal integration in order to conserve the profits of an outgrown, non-competitive private system of rail transportation?

The economic movement of food, fuel, and raw materials to and from our growing municipal centers and the conduct of

our exports to the sea in competition with foreign rivals is opposed to such a policy.

The prospective separation of terminal charges from the line haul in order to conserve badly needed railroad revenues and to stimulate local enterprise in modernizing terminals, is in conflict with such a policy.

The best use of our waterways and their progressive utilization to avoid the otherwise heavy expense of additional railroad construction necessary to meet the expanding needs of the country's commerce, is out of line with such a policy, as is the declared unwillingness of railroad operatives to live and work in peaceful cooperation under private ownership.

### *"Private Operation" a Myth*

The average stockholder is more careless of his vote than is the average citizen. There never has been a stockholders' management in the popular, democratic sense. What we have heretofore had through proxy representation, has been in the first instance control by speculative promoters for development purposes followed later by exploitive bankers' control. What the country now needs and is preparing to get, is technical control exercised through actual management and modified by popular opinion as expressed through Government representation.

Since the departure of the great competitive organizing owners, the roads have been run, are being run, and will continue to be run, by expert operatives, from the track boss up through the engineering and accounting staffs to the President of the road and the Director General; and the sooner this fact shall be recognized by the Government, the public and by security owners, the better for all concerned. The quality now most needed to bring about efficient operation, is *esprit de corps* in an operation staff composed of representatives of the Government, representatives of the official and classified services and representatives of the owners until these latter shall have been expropriated. Such a staff will in time generate efficiency—not indeed equal to that which existed before competition ended, nor as bad as politics alone can otherwise make it.

Efficient service rendered to the public, not for bonuses and tips, as has been proposed, but for just wages and salaries, in a distinguished and honorable public service is what the operatives

and the country require and may ultimately expect from the staff.

Absolute safety founded on a just basis of values is what the security owner most needs—in other words, a Government bond—and if he delays much longer to press for this, in the hope of securing the elusive chance of speculative profits, based on politically delegated control over rate making, he is likely to miss his market.

Director General McAdoo's recommendation that Government control shall be extended over a period of five years—carrying with it the tacit implication of perpetuity—is still the common-sense indication of the way out.

By temporizing, and by camouflaging novel facts at variance with American experience, it soothes susceptibilities, and affords the needed opportunity for gradually bringing about a change in our institutions which otherwise would be regarded as revolutionary.

Within the five-year period a national policy can be worked out, fair to all interests, and which will prevent the otherwise inevitable exploitation of owners, operatives and the public.

The country may not, however, proceed directly or indirectly to nationalize its railway system. As a resultant of the influences at work, this may finally be accomplished through a series of transmigrations camouflaged as quasi-private ownership schemes, such as those now pending in Congress. Organization of this kind will, however, tend to make Government control more complex and burdensome in deference to a public opinion which will resent any Government assurance of private profit. Coincidentally, organized labor will not function harmoniously under any semblance even, of private operation, and rates for service will fluctuate with changing political conditions. The weak points of private and public operation will be accentuated and the advantages minimized by all such attempts at mixed control and divided responsibility. During such an interregnum developing experience will continue to point the way to the one inevitable conclusion—viz., complete Government ownership, operation and responsibility.

(In this article I have not referred to the influence of inflation of Government credit upon railroading. This is a most disturbing factor as it is in every branch of commerce and industry, but its principal consequence is to accentuate and make more exigent conditions which would otherwise have worked out the same results more slowly).

# APPENDIX

## REPORT OF THE ANNUAL MEETING COMMITTEE

The Committee planned for the Annual Meeting of the Academy (39th Year) a two-day national conference on the subject of *Railroad Legislation*. The conference was held on Friday and Saturday, November 21-22, and consisted of four sessions and a dinner meeting, with the following sub-topics:

1. The Railroads and the Shipper.
2. The Railroads and the Investor.
3. Railroad Legislation (the dinner meeting).
4. The Railroads and Labor.
5. The Railroads and the Public.

The aim of the Committee was to focus attention, as far as possible, upon the two pending Congressional proposals for railroad legislation, namely, the House and the Senate Committee bills, and the problems of railroad legislation connected directly with those two proposals.

With the first edition of the program of the conference there was sent to every member of the Academy and to those invited to attend the conference a copy of a chart prepared by Mr. Richard Waterman for the United States Chamber of Commerce Committee on Railroad Legislation, giving a summary of the seven different plans for railroad legislation which had been submitted to Congress. At the conference itself Mr. Waterman presented a digest, in parallel columns, of the two Congressional Committee proposals. Naturally many aspects of the general problems of railroad legislation not directly involved in the two Congressional proposals came in for their share of discussion by the speakers on the program. This is particularly true of the general discussion of governmental ownership and operation.

Dr. Albert Shaw, Vice-President of the Academy, who had expected to preside at the opening session, was unfortunately prevented from being present, and Professor T. W. Van Metre, of Columbia University, very kindly took his place. Professor Van Metre also gave the sub-committee on program very valuable expert assistance and has kindly consented to edit the volume of Proceedings in which the papers and report of the discussion at this meeting will be published.

Professor Thomas Reed Powell, of Columbia University, presided at the second session. Mr. Thomas W. Lamont, Vice-President of the Academy, presided at the dinner meeting, at the beginning of which Professor Lindsay, President of the Academy, made a brief general statement concerning the program of the conference. Professor Henry R. Seager presided at the third session and Professor E. R. A. Seligman presided at the fourth and closing session.

At the dinner meeting, in addition to the speakers on Railroad Legislation, the following gentlemen were invited to be guests of honor:

The Right Hon. Viscount Edward Grey, British Ambassador to the United States.

Representatives from the delegates to the International Trade Conference:

M. Eugene Schneider, Chairman of the French Economic Mission to the United States and Chairman of the Creusot Steel Works; former member of the Chamber of Deputies.

Sir Arthur Shirley Benn, M.P., Chairman of the British delegation.

Commander Engineer Ferdinando Quartieri, Chairman of the Italian delegation.

M. Florimond Hankar, Chairman of the Belgian delegation.

Commander Giorgio Mylius, President of the Italian Master Cotton Spinners and Weavers Association.

Professor Albert H. Janssen, of the University of Louvain and Director of the National Bank of Belgium.

M. Eugene Loizeau, Engineer, assistant to the Director of the Credit Lyonnais.

Edward A. Filene, Boston, Chairman of the United States Chamber of Commerce Committee to the International Trade Conference.

Representative delegates to the International Labor Conference:

Professor Ernest Mahaim, Belgium.

M. Arthur Fontaine, France.

The Right Hon. G. M. Barnes, M.P., Great Britain.

G. H. Stewart Bunning, Great Britain.

Mgr. Dr. W. H. Nolens, Holland.

Baron Mayor des Planches, Italy.

Professor Adelfor G. Posada, Spain.

Dr. Nicholas Murray Butler, President of Columbia University.

Mr. Jose Fidele Lagos, "La Prensa," Buenos Aires, Argentine Republic.

Professor Graham Wallas, University of London.

Dr. Carl Kelsey, Acting President of the American Academy of Political and Social Science.

Major George Haven Putnam, English-Speaking Union, New York.

Owing to changes in the program for the official entertainment of the Prince of Wales in New York City on the evening of November 22nd, Lord Grey was unable to be present, and for the same reason several of the delegates to the International Trade Conference were prevented from being present, but Commander Mylius, Professor Janssen and M. Loizeau were present to represent their colleagues of the International Trade Conference. No member of the International Labor Conference was able to leave Washington at that time because of the fact that their conference was endeavoring to complete its program in the month of November and required their daily and hourly presence in Washington.

The following greeting of the President of the Academy to the members of both of these conferences was therefore given at the closing session of the annual meeting instead of constituting a part of the program of the dinner meeting, as originally planned by the Committee.

Dr. Lindsay, in closing the final session of the annual meeting and the national conference on Railroad Legislation, after thanking the speakers and those who had participated in the discussion throughout both days, said :

It was the intention of the Academy at the dinner meeting last night to depart from the program on Railroad Legislation for the brief space of half an hour to greet and hear from the foreign delegates to the International Trade Conference and the International Labor Conference. Unfortunately the time did not permit and the arrangements did not quite permit us to carry out that part of the program. We wanted to give expression at this annual meeting to what is doubtless in the minds of every member of the Academy, of our interest in these new beginnings in international co-operation that are so significant and so full of promise for the future development of our industries and for the future development of our economic life as reflected in this railroad problem that we are discussing. There are two important international conferences recently assembled in this country: the International Trade Conference, and the International Labor Conference which is still sitting in Washington. Unfortunately for us the latter organization is so burdened with its labors which it wishes to bring to a happy conclusion this month that

they are sitting long hours and its members are unable to leave Washington for even one evening's diversion in New York. We invited some half dozen of them—representative members of that conference—to be guests of honor at our conference. They all expressed the keenest interest in our meeting and sent very warm greetings, but unfortunately no single member of the conference could get here for the meeting last night.

The International Trade Conference has been in session at Atlantic City. It has adjourned and its members, about sixty in number, representing economic missions from France, Italy, Great Britain, Belgium and other countries, have been touring the country and have just returned to New York. They arrived here at a very late hour Thursday night. They were almost overwhelmed by the hospitality that the Merchants Association had planned for them during the two or three days they are to be here in New York. It was very difficult for any of them to attend this conference. Three of their delegates, however, were present last night and I think we owe them an apology for the fact that the hour was so late when the railroad discussion was finished that there was no opportunity to express this greeting then or to hear from them. One of the leading members of that conference is the Chairman of the French delegation, Mr. Schneider, the head of the Creusot Steel Works, a very broad-minded, statesman-like business man. He was very eager to be at our meeting last night and wanted to say a few words to our conference concerning their mission to the United States. He sent as his representative Mr. Eugene Loizeau, the assistant to Baron De Morais, the Director of the Credit Lyonnais. He was at the dinner last night and was prepared to have said a few words on the mission of the International Trade Conference to this country, had there been time. There was also with him Professor Janssen of the University of Louvain and Commander Mylius of the Italian delegation. There were also present Mr. Filene of the United States Chamber of Commerce and Mr. Farquhar, who were active in arranging for that conference. I do not think we ought to let this annual meeting adjourn without saying a word of greeting to both of those conferences and to express to them the thought that undoubtedly represents the very large majority of opinion of such gatherings as this—that the United States means to do its part in the international affairs of the world, and although there are political complications which our foreign friends may have great difficulty in understanding—I refer first to our friends who are here and also to the far greater number who have never been here and who will be still less able to understand—why we hesitate, why we have thrown away this opportunity, why we seem to fail to grasp the greatest opportunity that has come to any nation in the world. America is not going to lose that opportunity entirely. We were very slow rising to the occasion and doing our part in the great conflict. Many of us were very impatient at the slowness of the government leadership and the slowness of public opinion generally throughout the country in rising to our duty and our opportunity in that matter, but we did finally assert ourselves in that

conflict in a way that has given America cause for just pride. I believe that in this new era of international organization of public affairs we will find a way—just how it is going to be found I do not know—but I believe that we will find a way of coming in, even at the eleventh hour, and doing our part. I think we can assure our friends of these two great conferences, the beginnings of what will undoubtedly be a series of world conferences (many of which I hope will find it to their interest and pleasure to meet in this country), that we will find a way of taking our proper part and lending help and counsel and reaping the benefits of joint counsels in a better and more orderly arrangement of world affairs and in the guarantees of permanent peace.

In addition to the papers and addresses printed in the volume of Proceedings and the more or less extensive remarks of some of those who took part in the informal discussion and who have been good enough to expand their remarks into brief papers, which are also published in this volume, the following persons took part in the informal discussion: At the first session on Railroads and the Shipper, Mr. M. H. Winkler, of Winkler and Rogers, New York City; at the second session on Railroads and the Investor, Mr. S. E. Heberling, of the Switchmen's Union of North America, Buffalo, New York; Mr. George Scoville Hamlin and Mrs. L. C. Zicarelli, of New York City. At the dinner meeting, Mr. Thomas W. Lamont, of J. P. Morgan and Co., presided, and in his introductory remarks referred forcibly to the very great importance of the railroads and the proper solution of the railroad problem as the basic factor in the economic life and prosperity of the United States. At the fourth session Hon. Herbert C. Pell, Jr., Congressman from the 17th New York District, spoke extemporaneously on the objections to government ownership and operation of railroads and the desirability in any solution of the railroad problem under government regulation of giving the railroads a fair chance to make all the profit consistent with the highest standards of public service which the government ought to supervise and enforce. Mr. Pell also pointed out how the members of the conference and educated public opinion generally could apply the information gained in a conference of this character and exert real political influence on Congress in shaping the railroad policy of the government. Mr. Frederick J. Lisman, of New York City, and Mr. Arthur B. Farquhar, of York, Pa., took part in the informal discussion of this closing session of the conference.

The arrangements for the Conference were greatly facilitated

by the work of the members of the Annual Meeting Committee who served on special sub-committees to look after various details of the plans for the Conference. The Committee wishes to acknowledge with special thanks the very valuable services which Mr. James T. Grady, chief of the Bureau of Publicity of Columbia University, rendered the Academy and the conference as chairman of the Press and Publicity Committee. The efficient services of Messrs. H. Feldman, C. B. Austin and LeRoy E. Bowman on the committee of ushers deserve special mention and grateful thanks.

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## RAILROAD REGULATION UNDER THE TRANSPORTATION ACT

T. W. VAN METRE

Associate Professor of Transportation, Columbia University

THE annual meeting of the Academy of Political Science held in New York, November 21-22, 1919, was devoted to a discussion of railroad legislation. At that time it was clear that the period of Federal operation of railroads, which had begun late in December, 1917, was approaching an end, and Congress was wrestling with the problem of formulating a new policy of railroad regulation. It was apparent that there was to be a radical departure from the policy in effect at the time Federal control began. For several years the opinion had been gaining in strength that the system of railroad regulation established by the laws passed in 1887, 1906 and 1910 was faulty in principle, and there was an insistent demand for comprehensive changes. But while there was almost universal dissatisfaction with the old methods of regulation, there was a wide divergence of view as to what the new railroad policy should be. Congress was deluged with "plans", each plan representing, for the most part, an effort to protect the interests of the group which proposed the plan. At the meeting of the Academy in 1919 the leading proposals with respect to railroad legislation were fully discussed. The published proceedings of the meeting<sup>1</sup> constitute a record of the views then held by legislators, railroad managers, shippers, capitalists, labor leaders and prominent economists. The Transportation Act of 1920 showed evidence of the influence of many of the interests represented at that meeting.

The Transportation Act has now been in effect twenty-six months, and the Academy has obtained, from the same interests which took part in the discussion of 1919, an appraisal of the influence of the law upon the transportation business of the United States and upon the many other economic activities with which the railroads are closely related. What have been

<sup>1</sup> PROCEEDINGS OF THE ACADEMY OF POLITICAL SCIENCE, January, 1920.

the chief results of the Transportation Act? Is the policy embodied in that law superior to the policy which preceded it? Does the experience of the past two years warrant a belief that we have a reasonably satisfactory system of railroad regulation? Or should the Transportation Act be amended? And if so, in what particulars?

Among the many changes which the Transportation Act made in the railroad policy of the Federal Government there were three of outstanding importance. First, the law contained a rule of rate-making for the guidance of the Interstate Commerce Commission, that body being directed to establish a level of rates "so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." The enactment of this rule of rate-making, while something new in Federal legislation, was nevertheless little more than the recognition of a right which the carriers presumably had always possessed. Of much greater significance was the provision of the law designed to meet the practical problem arising from the application of such a rule of rate-making. A body of rates which would yield a fair return to the carriers as a whole would permit many carriers having exceptional advantages in the way of rich traffic territory, favorable conditions of operation, and well located terminals, to obtain a return "substantially and unreasonably in excess of a fair return." The recognition of this fact led to the adoption of a principle before unheard-of in Federal law, the recapture or recovery by the government of a portion of the income of those carriers whose earnings might exceed an amount deemed to be fair and reasonable. It was originally the plan of the Senate to meet the situation created by the unequal earning capacity of strong and weak roads by compelling the consolidation of the railroads of the country into a few great systems, which might employ uniform rates on competitive traffic and, at the same time, earn substantially the

same rate of return upon the value of their property. In the final draft of the bill, however, the compulsory feature of the consolidation program was eliminated.

The second important feature of the Transportation Act represented an effort to bring into effect a unified, national system of rate regulation, to replace the dual system of state and Federal control. The exercise of mutually exclusive powers by state and federal authorities had long been a fruitful source of controversy, and in many instances conflicting policies of regulation had resulted in the creation of those unreasonable discriminations the prevention of which had been the chief purpose of regulating the railroads. Under the Interstate Commerce Act, as amended in 1920, when the Interstate Commerce Commission finds that rates imposed by state authority cause any undue discrimination against interstate or foreign commerce, it may prescribe rates which will remove the discrimination; and such rates must be observed by the carriers, "the law of any State or the decision or order of any State authority to the contrary notwithstanding."

The third outstanding feature of the Transportation Act was the provision for the establishment of machinery to deal with labor difficulties on railroads. The law did not make strikes illegal, but it declared it to be the "duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption of operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof." The act directed that all disputes be considered, and if possible, decided, by conference between representatives of the carriers and of the employees directly interested. For the adjudication of disputes not capable of being settled by conference it authorized the creation of Railroad Boards of Labor Adjustment, and established the Railroad Labor Board. The Adjustment Boards were designed to deal with all disputes not involving wages. Because of differences of opinion between employees and managers as to how these Boards should be constituted—whether they should be local, regional or national—they have not been established. The only official labor tribunal to come into existence by virtue of the Transportation Act was the Railroad Labor Board, consisting of

nine members appointed by the President, the members being divided into three equal groups, representing respectively labor, management and the public. The Board was authorized to state what in its opinion constituted reasonable standards of wages and working conditions for railroad labor, being directed to take into consideration the cost of living, the scales of wages in other industries, the hazard of employment, and other relevant circumstances and conditions. The Act did not provide that the decisions of the Board should be binding, and it prescribed no means by which the orders of the Board could be enforced.

Many other changes in the system of railroad regulation were made by the Transportation Act. Among the leading changes in policy was the reversal of the attitude of the government toward the practice of pooling, the fifth section of the Interstate Commerce Act being amended to permit carriers, under the supervision of the Interstate Commerce Commission, to pool both traffic and earnings. The traditional attitude of the government toward railroad consolidation was also modified. Whereas consolidation had previously been regarded with disfavor, and not infrequently declared illegal, the Interstate Commerce Commission was now directed to prepare a plan for the consolidation of all the railroads of the United States into a limited number of competitive systems; and provision was made that after the Commission had completed its work the carriers might voluntarily enter into consolidations conforming to the Commission's final plan. The long-and-short-haul rule of the fourth section of the Interstate Commerce Act was amended, though the general principle adopted in 1910 was retained. The Cummins amendment governing the establishment of rules with respect to the liability of the carriers for lost and damaged freight was again modified, to give added protection to shippers. The long-continued agitation for Federal regulation of railroad capitalization at last bore fruit, the new law requiring carriers desiring to issue securities to obtain the approval of all proposed issues by the Interstate Commerce Commission. Unwise and unnecessary extension of railroad facilities was guarded against by requiring companies contemplating the construction of new lines to secure from the Interstate Commerce Commission a certificate of public con-

venience and necessity. Likewise it was provided that the abandonment of existing railroad facilities could not take place without the consent of the Commission.

The membership of the Commission was increased from nine to eleven. In addition to receiving the new powers previously mentioned, the Commission was authorized to establish minimum as well as maximum rates; it was given a larger degree of control of car service, and authority to direct the routing and distribution of traffic in times of emergency. It was empowered to require a carrier to permit the use of its terminal facilities by other carriers, to prescribe equitable divisions of joint earnings, to direct the routing beyond the lines of initial carriers of traffic not routed by shippers, and to exercise a closer supervision over railroad accounts and records. In one respect the authority of the Commission was curtailed, the time of suspension of proposed changes in rates being reduced from 120 days and an additional period of six months to 120 days and an additional period of 30 days.

In addition to establishing a new system of railroad regulation the Transportation Act made provision for the adjustment of the financial relations of the railroads and the government, gave to such carriers as chose to accept it a guaranty of net earnings for the six months following March 1, 1920, equal to one-half the annual rental paid by the government during the period of Federal control, and appropriated \$300,000,000 out of which railroad companies might secure loans during the first two years of private operation.

The twenty-six months that have passed since the enactment of the Transportation Act have witnessed a trial of virtually all those provisions of the law which marked a departure from the former railroad policy. While conditions have not been such as to permit a thoroughly adequate test of the law, there has been sufficient experience to make possible an estimate of its merits and defects.

Public interest has centered naturally upon the events connected with the three most important features of the Act, those having to do with the application of the rule of rate-making, the regulation of state rates by Federal authority, and the work of the Railroad Labor Board. The operation of other portions of the law has not, however, been attended with

insignificant results. The Interstate Commerce Commission made exceedingly effective use of its increased powers over car service during the months immediately following the termination of Federal control, when the freight business of the railroads was unusually heavy. The regulation of the issuance of securities by the Commission has done much, on the whole, to allay the fear of a recurrence of the financial operations which in past years brought disaster to owners of railroad stocks and bonds. The Commission has published its tentative plan of railroad consolidation, following the plan prepared, at the Commission's direction, by Professor William Z. Ripley of Harvard University. New forms of bills of lading for domestic and export freight have been adopted, defining more clearly the exact nature of the legal obligations of carriers and shippers. The promulgation of numerous orders suspending and cancelling railroad tariffs providing for reductions in charges indicates that the Commission is making use of its new power to establish minimum charges.

One of the first important duties which confronted the Commission, under the terms of the Transportation Act, was to endeavor to establish a level of railroad charges sufficiently high to give the carriers a fair rate of return. The law stipulated that for the two years following March 1, 1920, the Commission should take as a fair rate of return a sum equal to  $5\frac{1}{2}$  per cent of the value of the carriers' property, to which might be added, in the discretion of the Commission, one-half of one per cent, to provide for additions and improvements. Late in July, 1920, the Commission ordered a horizontal increase of interstate freight rates and passenger fares. Four rate territories were designated, an Eastern, a Southern, a Western, and a Mountain-Pacific. In the Eastern territory the increase of charges for the transportation of freight was 40 per cent, in the Western district 35 per cent, and in each of the other two regions 25 per cent. A twenty-per-cent increase of passenger fares was authorized, and a surcharge of 50 per cent imposed upon Pullman fares, the proceeds to go to the railroad companies.

After the authorization of the increase of interstate charges the railroad companies asked the various state railroad and utility commissions to authorize equivalent increases upon

intrastate traffic. In some states the applications of the carriers were granted, in some they were denied with respect to passenger fares and granted with respect to freight rates, and in other states the application met with refusals to permit any increase of a substantial nature. The carriers appealed to the Interstate Commerce Commission to order an increase in intrastate charges, where such increases had been denied by state authorities, upon the ground that the disparity between interstate and intrastate rates resulted in an undue discrimination against interstate commerce. The Commission acceded to the request of the carriers, and in a series of notable decisions ordered an increase of intrastate rates and fares corresponding in general to the increases which it had previously authorized on interstate business. A number of states challenged the power of the Commission to increase the general level of intrastate rates. In a test case involving the order made with regard to rates in Wisconsin the Supreme Court upheld the action of the Commission, vindicating its right to alter intrastate rates, not only when there was discrimination against a particular person or locality, but when it should find state rates so low, compared with interstate rates, as to prevent the carriers from earning from their intrastate business a reasonable proportion of the revenue to which, under the terms of the Transportation Act, they are entitled.

Of equal importance with the rate-making activities of the Interstate Commerce Commission has been the work of the Railroad Labor Board. For some time before the Transportation Act was passed there was much unrest in the ranks of railroad labor. Prices had advanced immoderately since 1915, and while the United States Railroad Administration had been generous in its treatment of labor, the workers felt that the advance in the rate of compensation had not been commensurate with the increase in the cost of living. Local disturbances seriously impeded the operation of the railroads during the closing months of Federal control, and a general stoppage of work was averted in the spring of 1920 only because of the prospect of a speedy consideration of the wage situation by the Railroad Labor Board. Immediately after the Board was organized it undertook a settlement of the wages question, and on July 20, 1920, it rendered a decision granting to all classes of railroad labor a substantial increase

of wages, retroactive to May 1. By this decision the annual outlay of the carriers for wages was advanced twenty-two per cent. In the fall of 1920 the railroads found it necessary to take steps to reduce expenses. The business depression which had begun in the summer caused a marked decline in the volume of railroad traffic, and the increased rates granted by the Interstate Commerce Commission fell far short of supplying the fair return of six per cent authorized by the Transportation Act. The Labor Board was asked not only to authorize a reduction of wages, but to abrogate the working rules and agreements which had been inherited from the Railroad Administration, and which the carriers asserted to be the cause of large annual losses. In 1921 the Labor Board authorized a twelve-per-cent reduction of wages, and it also ordered new working agreements to be adopted to replace those put into effect during the period of Federal control. During the short time of its existence the Board has been exceedingly active, handing down numerous decisions affecting the entire railroad service, and issuing many orders with respect to disputes on the lines of individual carriers. One of its most noteworthy achievements was the effective part it took in averting the threatened railroad strike in October, 1921.

The operation of the Transportation Act has evoked a great deal of criticism. It was unfortunate that the law had its earliest trial during a period of business depression. It was particularly unfortunate that the large rate increases granted by the Interstate Commerce Commission came at a time when the general level of commodity prices, and especially of the prices of farm products, was steadily declining. While there is little ground for the belief that the increase of transportation rates contributed in any marked degree to the business depression, it was inevitable that in many quarters the new rates should be held as the primary cause of the hard times. There have been many demands for the unconditional repeal of the entire rule of rate-making, and there has also been an unfortunate tendency to encourage interference with the work of the Interstate Commerce Commission by legislative and executive officials. The work which the Commission has done in the readjustment of rates believed to be unreasonably high and the recent partial revival of business have done much, however, to still the criticism of the rate-making provisions of the

Transportation Act. So far there has been no recapture of excess earnings from individual carriers, though the Commission is now preparing to undertake this work. It is highly probable that the railroads affected will challenge the constitutionality of this feature of the law. The carriers of trunk line and of central freight association territories have already called into question the legal right of the Commission to order a general readjustment of the divisions of joint earnings.

The invasion by the Federal Government of the right previously exercised by states to regulate intrastate commerce has been more sharply criticised than the rule of rate-making, and an attempt is being made to modify that portion of the law which, according to the Supreme Court, gives the Interstate Commerce Commission authority to adjust the general level of intrastate rates in accordance with the needs of the carriers for revenue. Senator Cummins has said that it was not the intention of the framers of the law to give to the Commission such sweeping power, it being thought that the law would permit the Commission to modify intrastate rates only in cases where the disparity between state and interstate charges resulted in discrimination against particular individuals or particular localities.

The chief criticism of the Transportation Act has been in connection with the provisions for the adjustment of labor troubles. The Labor Board has met with a comparatively small measure of public approval, and it has not been looked upon with great favor either by the railroad managers or by the railroad employees. Railroad labor unions have achieved a position of much strength in recent years by virtue of the Adamson Law and because of the deferential policy of the Railroad Administration. They have a feeling of confidence in their power to bring to a successful issue a contest with the railroad managers, and consequently they are inclined to regard with disfavor the creation of arbitration tribunals of any character. Because of the business depression the railroad managers have a large measure of confidence in their ability to dictate terms to their working forces in case of a strike, and many of them feel that the Labor Board is an impediment to the speedy readjustment of wages and working rules which in their opinion the present condition of the transportation industry justifies. The difference of opinion be-

tween railroad executives and the Board as to the scope of the Board's jurisdiction has tended to prevent the new tribunal from exercising the influence that was expected. The public, on the whole, has been impressed with the fact that the scale of wages of railroad workers has not declined so rapidly as the scale of wages of workers in other industries, and feeling that high wages have been largely responsible for high railroad rates, it has been inclined to condemn the Railroad Labor Board for failure to bring about a more expeditious reduction of railroad expenses. The effective action of the Board at the time of the threatened strike in October, 1921, tended, however, greatly to increase its prestige, and gained for it many more friends than it had previously possessed. Perhaps the greatest pretext for criticism of the Labor Board, both by the carriers and by the public, has been the fact that the control of railroad wages has been entrusted to one administrative body and the control of rates to another, without specific provision for close cooperation between the two. The demand for the unconditional abolition of the Labor Board has not been so urgent as the demand that the Board be abolished and its functions vested in the Interstate Commerce Commission.

It is not improbable that the Transportation Act will be modified in the not distant future, though with the partial recovery of business and the gradual improvement of the financial position of the carriers the opinion is unquestionably gaining strength that it would be well to leave the law undisturbed for a time in order to see how it will function under more nearly normal conditions of business than have prevailed during the past two years. At any rate it is not to be expected that the law will be changed as extensively as its severest critics desire. It must be remembered that if the law is amended merely so as to eliminate its three most important features the country will be thrown back upon virtually the same railroad policy that existed in 1917. One has only to remember the almost universal condemnation of that policy to understand how unwise it would be to return to it. Whatever has been the criticism of the Transportation Act there are few who will not admit that the policy which it embodies is superior to the former railroad policy. The general acceptance of this fact affords strong basis for the belief that there will be no hasty and ill-considered changes.

# RAILROAD LABOR AND THE LABOR PROBLEM

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THE primary purpose of the Academy of Political Science is educational. It was founded in recognition of the fact that there is a large and growing body of Americans who wish really to understand both sides of the questions that concern us as citizens. As a contribution to our educational program these meetings to discuss the Railroads and Business Prosperity are especially significant. They are a deliberately planned follow-up of the similar meetings which the Academy held in November, 1919, on Railroad Legislation.

At that time, as you will all recall, Congress was wrestling with the problem of the terms on which the railroads should be turned back to their owners. The sessions of the Academy then held dealt with every important phase of that subject. Senator Cummins explained the virtues of his bill. Representative Merritt told why the House bill, the Esch Bill, was a better measure. An interstate commerce commissioner, railroad executives, railroad labor union officials, spokesmen for shippers, for the stockholders and for the public, and the inevitable professors, were all given opportunity to present their views. There resulted a volume of PROCEEDINGS which contributed greatly to the enlightenment of our members, of the public, and even of Congress, as the good features—I will say nothing of the others—of the Transportation Act of 1920, which soon followed, clearly demonstrated.

Today we come together to appraise that measure in actual operation. As two years ago, so today, we are still confronted by the railroad labor problem as the most difficult aspect of the whole railroad question. I have been asked to relate the problem to the labor problem in general. The relation seems to me so obvious that I need take but a few minutes of your time to characterize it.

The railroads have long been recognized as a business “affected with a public interest”, a “public utility”, as the phrase

goes. This means that while their business is not government business it is also not strictly private business. In recognition of its quasi-public nature we began thirty-five years ago to subject the charges they might impose and the quality of service they must render to regulation through the Interstate Commerce Commission. Just as the railroads occupy a middle ground between public business and private business, so railroad employees occupy a middle position between public employees and private employees. We have been very slow in realizing just what this implies. For many years we placed sole reliance on mediation and voluntary arbitration to adjust railroad labor disputes. Even the Transportation Act, while creating the Railroad Labor Board, is vague in its definition of the powers of this Board and provides no adequate sanction for the enforcement of the Board's decisions.

This deliberation in recognizing the quasi-public nature of railway employment and extending to railway employees some of the protection as regards certainty and continuity of status and some of the responsibility as regards regularity in the performance of their duties that apply to public employees, reflects the difficulty of the problem. It is well that we are taking ample time to settle the railroad labor problem. It is helpful that the timid steps toward an adequate railroad labor policy in the Transportation Act are being subjected to judicial review, even if some of the decisions seem to weaken rather than to strengthen the labor provisions of that measure. The goal to be aimed at is coming to be more and more clearly perceived by all concerned. As regards the public it is maximum efficiency on the part of the railroad employees and protection against the interruption of railroad service; as regards the employees it is the "just and reasonable" wages and working conditions prescribed by the Transportation Act, coupled with such participation in the determination of those conditions as will call forth loyal and efficient service; as regards railroad executives it is such degree of control over the operation of the railroads as will enable them to do their work efficiently and to secure the most loyal and efficient cooperation of their fellow employees. As regards the owners of railroad securities it is such an adjustment of labor costs to revenues as will afford them a fair and reasonable return on their bona-fide investments.

I shall not anticipate the speakers who succeed me by attempting to say how this goal is to be attained. But, considering together these different aims, there are two principles which in the future development of our railroad labor policy should, in my judgment, receive clearer recognition. The first is the principle that the operating employees and the shop employees present separate and distinct problems. Continuous service on the part of the operating employees on every division of every railroad system in the country is essential to the public welfare. This is not true of the shop employees of any railroad. In my opinion only harm and confusion have resulted from trying to apply exactly the same method for adjusting disputes to the operating employees and to the shop employees. Operating employees are quasi-public employees in a sense that entitles them, in return for guarantees of continuous service, to a definite and fully protected status. Shop employees are little, if at all, different as regards the importance of the services they render from private employees in the many private plants which do the same work for the railroads in some sections of the country that is done by the railroad shops in other sections. As I am a strong believer in leaving labor questions to voluntary adjustment, under proper safeguards protecting the right of the individual employee to organize, I do not believe that any useful purpose would be served by restricting the right of shop employees to strike should they desire, at any rate, unless and until we come to adopt such a policy for other employees in manufacturing and repair plants. On the other hand, if the operating employees should ever again attempt to exercise the right to strike, which they enjoy, there are clear indications that public opinion would demand its curtailment. Such curtailment would be fair and proper only if it were coupled with the adoption of standards as regards wages and working conditions and continuity of employment that made the use of the strike weapon clearly no longer necessary as a means of securing the just and reasonable conditions, which the Transportation Act prescribes.

The other principle is that whatever public authority is charged with adjusting disputes involving the operating employees, it must recognize that it is its duty to seek and find some other and better basis for determining wages and work-

ing conditions than reliance on settlements that may be imposed by railroad executives through their superior power, or that may be wrung from such executives because of the superior power of the organized employees. From this point of view the statement with which the Railroad Labor Board prefaced the first wage decision which it rendered on July 20, 1920, advancing wages for the collective railroad employees of the country, was highly disappointing. It said: "The Board has been unable to find any formula which, applied to the facts, would work out a just and reasonable wage for the many thousands of positions involved in this dispute." The objection to this statement is not that it would have been reasonable to expect the Board to find such a formula after its few weeks' study of the problem but that it implies that no such formula or formulæ are to be found. If, instead of contenting itself with such a pessimistic utterance as regards the possibility of placing its decisions on a scientific and defensible basis, it had recognized the grounds for distinguishing between operating employees and shop employees, and indicated its determination to seek a proper basis for the determination of the wages and working conditions of operating employees, so that in its decisions rules would in time be laid down which would justify curtailing the right of operating employees to interrupt the railroad service of the country, the public would now entertain a much higher opinion of the Board and much greater confidence in its ability to lead in the solution of the railroad labor problem.

# FUNCTIONS AND POLICIES OF THE RAILROAD LABOR BOARD

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**A**S a background for our discussion it may be profitable to recall the more significant provisions of the Transportation Act of 1920 relating to labor—that portion enacted under the title “Disputes between Carriers and their Employees and Subordinate Officers”. The fundamental purpose of this portion of the statute is revealed in the first sentence of Section 301, which declares it to be the duty of all carriers and their officers and agents to exert every reasonable effort and adopt every available means to avoid any interruption to operation growing out of a dispute between carrier and employees. Uninterrupted transportation is essential to the life and happiness of the people and it is wholly proper that this thought should be kept in the forefront of any legislation concerning labor controversies on the railways of the country.

Following this general injunction the specific plan is developed. All disputes must be considered, and if possible, must be decided in conference between authorized representatives of those directly interested in the dispute. This initial conference usually would take place on the individual railway, but if the dispute were of wider extent, it might conceivably involve many carriers. Failure to reach a decision in such a conference is provided for by boards of reference to which the controversy may be sent.

In the first place, there are the Railroad Boards of Labor Adjustment. These boards may be established by agreement between carriers and employees. They may be limited to a single line, to a group of carriers, or they may comprise the carriers as a whole. They are to be bipartisan in character. Their jurisdiction is an appellate one, and covers only such disputes as involve grievances, rules or working conditions, but not wages. Such a board, when set up, receives for hear-

ing any dispute not settled by local conference, upon the application of any carrier or employee organization, or the petition of not less than one hundred unorganized employees. Furthermore, this Board either on its own initiative or upon the request of the national Labor Board, may take jurisdiction whenever it is of the opinion that the dispute is likely substantially to interrupt commerce.

Finally, at the apex of the pyramid is the Railroad Labor Board, an arbitration body consisting of three representatives each of labor, the carriers and the public. It takes jurisdiction of disputes concerning working conditions not settled by Adjustment Boards or concerning which it decides that Adjustment Boards have not exhibited due diligence. In case no Adjustment Board has been organized, it takes the place of this subordinate body and receives the dispute on appeal directly from the local conference.

So far as wage disputes are concerned, the Railroad Labor Board assumes direct jurisdiction on appeal from the local conference without the intermediation of any Adjustment Board. And it may go further and upon its own initiative suspend the operation of any original decision concerning wages made locally, if it is of the opinion that the decision involves such an increase as will be likely to necessitate a substantial readjustment of the rates of any carrier. Decisions are to be made public by transmittal to the President and to the Commission. If an order of the Board is disobeyed, it may hear and determine the violation and make public its finding. But it has no weapon of enforcement beyond that of publicity.

This Board has been in existence for nearly two years, long enough to develop its policy at least in outline and give indication of what are to be its fundamental guiding principles. Certainly it has had a sufficiently varied experience during its brief and busy life to prevent it from sinking to the level of bureaucratic routine. Catapulted into the midst of a situation seething with discontent and threatened outbreak, the Labor Board was compelled at the beginning to act under pressure and without that deliberation that should characterize the decisions of a judicial body. And working under pressure has been the habit of the Board almost continuously since the beginning. It may have made some mistakes. It certainly

has not met with universal approbation. But its work should be judged with due consideration of the conditions under which the Board was created and under which it has been compelled to work.

In the determination of the reasonableness of wages it was under the guidance of Congress, which laid down seven conditions that were to be taken into consideration. Hazard, skill and responsibility were obvious factors, as were character and regularity of employment. Inequalities in previous wage adjustments were certainly pertinent considerations, for until the wage base was determined to be sound and fair, no increases or decreases therefrom could be fairly appraised. But the Board naturally shrank from an investigation that would consume much valuable time and carry it far afield, and this factor was given slight attention. Cost of living, which the employees use as an argument for increases when prices are rising and which is taken over by the carriers when the tide begins to recede, cannot by itself determine the fundamental reasonableness of an existing wage. It merely indicates the desirability of an increase or a decrease from some assumed standard which has been only vaguely fixed, and may not have been reasonable in the beginning. It is worthy of note that Mr. Jewell in his recent presentation before the Labor Board in behalf of the shop crafts, challenged the whole social order and based his plea for an increase of existing wage rates upon the necessity of assuring to the workers an American standard of living. The laborer is worthy of his hire, and this hire must procure for him the opportunity to live in comparative comfort without reference to the financial condition of his employer.

No mathematical rule has been discovered for the determination of a reasonable wage. But so long as we maintain our régime of private industry, one of the determining influences that must be accepted by any wage-adjustment board is the first-named of the seven conditions listed in the statute, "the scale of wages paid for similar kinds of work in other industries". Granted that the statistics of wages have been honestly and intelligently gathered and that no manipulation of wage rates has occurred through undue pressure of combined capital, the price that must be paid for similar labor in the open market is one of the conclusive factors in determining

the reasonableness of a prevailing wage standard. Moreover in connection therewith the Board should adjust wages in harmony with the industrial conditions of each locality. Standardized wages effective over wide areas can with difficulty be defended on any economic basis. Their reason for existence is political and strategic. Testimony submitted by the employees themselves in Chicago recently is a virtual recognition of the need of restoring those differentials between town and city and between one section and another that were largely destroyed during the period of the national agreements.

But this wage the carrier should pay irrespective of its financial condition. Mr. Jewell is fundamentally on solid ground in directing the attention of the Board to the standard of living of the laborer and away from the railway's ability to pay. It is not only unfair but also unsound to make the wages of the employees dependent upon the prosperity of the carriers. The public must eventually be made to pay what is necessary to keep capital in business and labor adequately rewarded. But if there is any faltering on the part of the public, it is capital that must bear the brunt, not labor. Of course there are instances, and some of them have been recognized by the Labor Board, where railway operation has only been possible through a reduction of the wage standard, but these have been minor instances on small roads, and it is significant to notice that in the case of the Missouri and North Arkansas, for example, the Board in reducing the wages stipulated that capital should receive nothing until wages had been restored to standard.

Overemphasis has been put upon the relationship of wages and rates—the argument that wages depend upon the ability of the carrier to pay—by the offer of the railways last October to translate all further reductions in wages into rate reductions. Why such an offer was made it is difficult to say. Possibly it was a strategic move to enlist the shippers on the side of wage reductions. But the practical value of the offer was certainly insignificant. The effect in rate reductions of a decrease of ten per cent in wages would be so small that it would scarcely be recognized even if it had immediate effect upon the movement of traffic. But all indications point to the conclusion that reductions in rates would not stimulate traffic movement

to any considerable degree. The trouble lies in the business situation. When business picks up, the height of the freight rate will be in large measure forgotten.

Those who are insisting that wages depend upon rates are urging the transfer of the duties of the Labor Board to the Interstate Commerce Commission, on the ground that the agency that determines revenues should be in control of expenses. Their arguments are not impressive. To be sure, there has been a certain amount of jolting in the machinery and the two agencies have not worked as cooperatively as they might have done. But the combination of the two functions in the one body would not solve any problem. Wages would still have to be considered separately and ought still to be considered ahead of rates if any conclusions of enduring force are to be reached. And, besides, the Commission has enough troubles of its own.

A review of the activities of the Labor Board reveals the fact that whereas it was designed as an appellate body to receive only such controversies as could not be settled locally or regionally, which presumably would be few, it has been for most of its life largely a court of original jurisdiction because of the utter failure of the conference and adjustment machinery to produce results. It is probable that the presence of the Labor Board works as a deterrent to quick settlement in conference. One of the parties feels that better terms may be secured by appeal and so declines to participate in a local adjustment, or else makes merely a perfunctory effort toward settlement. The result has been to bury the Board in petty issues with which it should not have had to concern itself. Unsettled controversies of minor character carried over from the federal period occupied much of the time of the Board at the beginning. The failure of the carriers and their employees to get anywhere in the revision of the national agreements threw the burden of readjustment wholly upon the shoulders of the Labor Board.

It is true that adjustment boards have been set up in each of the three territories, but thus far they have been confined to men in engine, train, and yard service, and have included only a portion of the carriers. No such boards have been created for settling the problems of the shop crafts, in which the con-

troversies over working conditions are much more numerous than in train service. This failure of carriers and shop craft employees to set up adjustment boards is in part due to the attitude of the railways, which are disposed to distinguish between occupations that are exclusively railway in their character, and those that are similar to commercial employment. Shopmen are merely skilled mechanics. They belong to unions associated with the American Federation of Labor which contains men of the same craft employed in other industries. Questions of policy are decided by vote of the entire union membership and railways have resented the idea that rules for railway shopmen should be made by men engaged in other than railway occupations.

Nevertheless, it is evident that means should be devised for encouraging and developing the type of local conference and adjustment that the Act contemplated. Sound principles of labor adjustment demand that removal of misunderstandings and elimination of grievances should be undertaken at the bottom and not at the top. Local conference develops a loyalty to the individual operating organization without which efficiency is impossible. Such loyalty is peculiarly needed in the railway industry, in which the geographical extent of operations requires the scattering of employees over a wide territory where they are thrown largely on their own resources.

It becomes a question whether the Labor Board has used its influence as vigorously as it might to encourage local adjustment. Of course it has compelled compliance with the Act, which has required local conference as a preliminary to an appeal to the Board. But there is no indication that it has been unwilling to accept these appeals when made. Why has it not followed the practice of the court which sends back for further deliberation a hung jury? Why could it not refuse to hear an appeal because the conference was obviously perfunctory? On the contrary, in the present wage hearing, instead of passing upon the merits of Mr. Jewell's plea that genuine conferences had not been held, the Board postponed decision on this issue until after all the evidence should have been offered by both sides. I do not mean to argue with respect to this specific issue that the preliminary conferences have not been genuine. Upon that I express no opinion. I

am merely insisting that the Board's general attitude does not betoken any solicitude for the preservation and the enlargement of the powers of the local conference.

In fact, there is much to lead one to the conclusion that the Board is magnifying its own powers and is extending them into that field which should be the exclusive possession of the railway executives. To discuss this issue in detail would extend this introductory paper beyond its proper limits. The Board's attitude may be understood by brief reference to a few of the more striking cases. In an issue last September in which a carrier discharged a man because he belonged to a union and challenged the power of the Board to interfere in a matter of contract between employer and employee, the Board held that it was required to take jurisdiction of all cases not decided elsewhere, and that it must decide all disputes that were likely to interrupt the operation of the carrier. This all-embracing attitude takes out of the hands of the individual carrier all control of its labor relations when they have reached a stage in conference where disagreement has resulted. For of course any disagreement may conceivably develop into an interruption of traffic.

Another illustration of the Board's interpretation of its powers is found in the Erie Railroad case, in which the carrier, after conference with its employees resulting in a disagreement, restored the rates of pay in effect before the Labor Board's decision of July, 1920. The Board held that the road had no authority to decide when new conditions warranted a change in wages, and expressed its somewhat heated views in the following language:

This position, of course, renders nugatory and vain the elaborate and costly processes established by the Act and applied by this Board. It sweeps aside at the will of one party a decision arrived at after the presentation of evidence and argument by the many parties to the dispute, accepted by all and now obeyed by substantially all carriers. It justifies a disregard of the factors specified by Congress for the ascertainment of just and reasonable wages and substitutes for these factors the financial benefit of the carrier. If valid, the intent of Congress that conference, reasonableness and justice should be substituted for power, violence and disorder in the settlement of railroad labor disputes is utterly destroyed and legislation enacted after the most careful consideration rendered ridiculous and even fraudulent. If a carrier may arbitrarily reduce wages decided to be reasonable and set aside rules while a party to proceedings with regard to such rules, no reason appears why railroad employees may not announce an immediate intention of abandoning the service in concert unless de-

mands for increased wages or more favorable working conditions are at once satisfied, provided a trend toward higher living costs shall have appeared or wage scales in similar industries shall have advanced. Such conduct is highly provocative of interruption to traffic and is not only not consistent with the Act, but is thereby clearly condemned and prohibited.

No court has passed upon this question because the carrier complied with the ruling of the Board, but it is the particular feature of the law to which the most serious objection is raised by railway management. It is clear that under this interpretation, management has no power to readjust wages without the consent of the employees, and if that is withheld, without a hearing and a decision by the Labor Board. It is the contention of railway management that it should have original authority to adjust wages, its action to be subject to review by the Board, which should have power to make its findings retroactive. Without such a procedure, wage-fixing will soon become an exclusively governmental function.

Finally, there is the case of the Pennsylvania Railroad, which is too familiar to need elaboration here. The Board went further in this instance than in any other controversy of which it has taken jurisdiction, and laid down general rules of procedure which the railway was ordered to follow in choosing employee representatives to confer with management concerning a plan of labor adjustment. The Board even went so far as to prescribe the form of ballot which the road should use, although this portion of the order was later modified. But it did insist upon certain principles of representation with which the road was not willing to comply. In this respect it apparently exceeded the powers granted it by the statute, for it has within the past fortnight been enjoined by the Federal Court from enforcing its orders against the carrier. The decision of Judge Page virtually forbade the Board to interfere with the procedure of the carrier which set up a scheme of employee representation for the handling of local grievances. [I note the prompt announcement that the Labor Board proposes to appeal this decision. This, of course, is quite proper and quite desirable in order that the actual powers of the Labor Board should be clearly defined by a higher court.]

However much we may as individuals sympathize with the underlying purpose that inspired the Labor Board—the desire

to permit each employee to be represented by the person or by the organization of his choice, whether this person or organization was local to the Pennsylvania Railroad or not—we must recognize that this position of the Labor Board invades deeply the field of management and is one more step in the direction of robbing the railway executive of that initiative which is essential to efficient operation.

I am not one of those who believe that the Labor Board should be abolished. It has much valuable work to do within its proper field. Above all it stands for the settlement of labor problems through the medium of arbitration rather than that of the strike. Uninterrupted transportation, which is at the basis of the present law, is a goal which we must steadily approach. We must accustom the public and labor to the idea of arbitration as a permanent substitute for the strike. Capital and labor should be required to accept service in this industry subject to a limitation upon their freedom of action in the settlement of their disputes. There would have been no justice in incorporating compulsory arbitration into law in March, 1920, and imposing restrictions upon employees just emerging from government employment, into which they had been thrown without their consent—employees long in service with valuable seniority rights and unfitted by age and experience for any other employment. But the public should announce a future policy of compulsory arbitration, with the purpose of realizing it as speedily as conditions permit. The public must assure the contestants that they have a tribunal in which absolute justice will be meted out. Such a tribunal must offer a compensation and a tenure sufficient to attract the most competent men the country can produce. It must establish a labor code which assures to labor certain fundamental rights. Such a code the Board itself attempted to lay down last July. This code has not met with universal approval, but it gives at least a basis for discussion.

There is not opportunity at this time to discuss the arguments for and against compulsory arbitration. I wish only in reply to those who insist that it is wholly impracticable, to call attention to the influence exerted by the Labor Board and the labor provision of the statute last fall in preventing a nationwide strike. Notwithstanding the fact that the law contained

no sanctions and that the only method of protest left for labor against the decision of the Board was the use of the strike weapon, the strike did not take place. It crumbled because in spite of all explanations and protests, labor could not rid itself of the odium of striking against the decision of a body created by law for the express purpose of settling disputes of this character. Public opinion refused to endorse lawlessness and the gigantic structure of revolt collapsed like a house of cards.

With the rights of labor adequately protected by a code sanctioned by law, and with a competent and high-minded arbitration board, there should be no more inherent difficulty in settling labor disputes peaceably than there is in adjusting the ordinary dispute in courts of law. The cry of involuntary servitude, under such circumstances, is not persuasive. Public policy must guarantee justice to the disputants but it must also protect the people at large from the intolerable burdens of interrupted transportation.

# LABOR POLICIES OF THE TRANSPORTATION ACT FROM THE POINT OF VIEW OF RAILWAY MANAGEMENT

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General Counsel of the Pennsylvania Railroad

A DISCUSSION of the labor policies of the Transportation Act from the point of view of railway management is hardly within the province of a member of a railroad legal department, but I shall address my remarks simply to a statement of facts which will authoritatively set forth the policy of the company which I have the honor to serve, and some phases of the controversy with the United States Railroad Labor Board which led to our appeal to the United States Court at Chicago.

Section 301 of the Transportation Act declares it to be the duty of all carriers and their officers and employees to exert every reasonable effort and to adopt every available means to avoid any interruption in the operation of any carrier growing out of any dispute between the carrier and its employees, or its subordinate officials. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or employees, or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the Board, which, under the provisions of the title, is authorized to hear and decide such dispute.

In Decision No. 119 the Labor Board assumed to terminate the National Agreements, and called upon the officers and system organizations of employees to designate and authorize representatives to confer and decide so much of the disputes relating to working rules and conditions as it might be possible for them to decide in conference, although no dispute as to rules and working conditions had been referred to the Board under the Transportation Act. To this decision the Board attached and assumed to prescribe sixteen principles to govern

such conference and required such conference to conform thereto. Principle No. 5 declared the right of a lawful organization to act towards lawful objects through representatives of its own choice, whether such representatives were employees of the carrier or not, and declared further that the carrier must agree to such principle.

Principle No. 15 declared that the majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. It was provided, however, that no such agreement shall infringe upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

While not conceding that the Labor Board had at any time acquired jurisdiction over the National Agreements, or that it had any right or power to revive and perpetuate the same, as it did in Decision No. 119, or that it had power to prescribe the principles which it attached to said Decision No. 119, the Pennsylvania Railroad Company endeavored to comply with the said decision and the said principles. Though not recognizing any obligation so to do, our company called into conference its several classes of employees with the view to negotiating with each class, respectively, rules and working conditions to govern and control the relations between it and its employees, in lieu of the National Agreements, which had ceased to exist, and to which our company was in no wise a party.

There was upon our lines a labor union in the shop crafts known as System Federation No. 90, which is affiliated with and is a branch of the Railway Employees Department of the American Federation of Labor. The officers of System Federation No. 90 proposed to confer with the company and to negotiate rules in accordance with Decision No. 119 of the Railroad Labor Board. Our company refused to negotiate with such officers, but, while recognizing no legal obligation so to do, offered to negotiate with committees of its employees composed of men actually engaged in its service, regardless of whether the members of such committees were or were not members of System Federation No. 90.

It may be here stated that it has been the policy of our company, since the termination of Federal control, to re-establish with its own employees a harmonious relationship, bearing in mind that honest, efficient and economical operation of its lines can be secured only by close and unrestricted cooperation by the management and its employees. To that end it determined that all classes of employees should have a voice in the administration of matters affecting their welfare through representatives of their own selection, provided that such representatives, whether union or non-union men, should be actual employees. The officers of System Federation No. 90 declined to cooperate with the carrier in the selection of committees to represent employees with whom the carrier might negotiate rules and working conditions. Thereupon the company, with the cooperation of certain employees in the shop crafts, though recognizing no legal obligation so to do, prepared and distributed to such employees a ballot upon which each employee might designate employee-representatives to confer with the company as to rules and working conditions.

After the distribution of such ballots the officers of System Federation No. 90 distributed ballots to all such shop craft employees and warned each such employee not to use the ballot furnished by the carrier, and directed each such employee to vote for System Federation No. 90 as his representative for such conference. Our company recognized the result of the election which it conducted, and thereupon entered into conferences as to rules and working conditions with the employee-representatives so chosen.

Thereafter System Federation No. 90, by Mr. B. M. Jewell, President, Railway Employees Department, American Federation of Labor, filed with the Labor Board an application for decision, complaining that the carrier had refused to negotiate rules and working conditions with the officers of System Federation No. 90 and was proceeding to negotiate rules and working conditions with committees selected in the manner aforesaid, and by reason of the premises had violated Decision No. 119, and particularly Paragraph 2 thereof and Principles 5 and 15 attached to the said decision. Thereafter the Board rendered its Decision No. 218, in which it said: "Under the authority of the Transportation Act as hereinbefore cited, the

Labor Board hereby declares that both of said elections on the Pennsylvania System were illegal and that rules negotiated by the alleged representatives selected by either ballot will be void and of no effect, and orders that a new election be held."

Thereupon the company made application to the Board to vacate and set aside its said Decision No. 218, expressly denying the right and power of the Board to prescribe principles which must in law govern the carrier and its employees in the making of agreements covering working rules and conditions. Notwithstanding this, however, the company asserted that it had endeavored in negotiations with its employees to adopt and observe such of the said principles as are fundamentally sound and correct.

The Board decided that it had acquired full jurisdiction, but it declared "that question is not of prime importance in this case." The Board also declared: "There is no question of the closed or open shop involved in this dispute and no other real matter of principle; the question involved is merely one of procedure." With these propositions the company took direct issue and represented to the Board that if the question was merely one of procedure the Board had no right or power to set up its judgment or opinion against that of the carrier. Dissatisfaction, whether real or fancied, by certain employees with matters of "mere procedure" should not be tortured into a "dispute" within the purview of Sections 301 and 307 of the Transportation Act. It was claimed that no fear need be entertained of "interruption to the operation of any carrier" because of differences between carrier and employees upon questions of "mere procedure." Disputes under the law, referable to the Board, are those of substance and real moment. Reduction of wages, real grievances, unfair, unreasonable, burdensome working rules and conditions are the matters comprehended by the Transportation Act as prolific of "disputes" which might interrupt transportation, to prevent which the Labor Board was created. The company denied the power of the Board to prescribe an election, or any other method, by which the carrier may ascertain who are the authorized representatives of its employees; and it averred that it could not accept as advisory the rules and conditions set forth in the Board's decision in the case, especially the form of the ballot

and the franchise qualifications fixed and determined by the Board.

The company represented that, as the occasion requires, it will accord franchise rights only to its employees in service, or absent upon leave, and will not concede voting qualifications to men who have been laid off or furloughed and who may be engaged in other occupations or who may never return to the service of the carriers.

The company denied the power of the Board to compel a conference or to prescribe with what representatives of employees it shall confer, and it declared that it could not accede to the rule prescribed for ascertaining the representative capacity of the spokesmen for unorganized employees. The Board was advised that there were in the service of the carrier at that time approximately 176,000 employees who were interested in and affected by rules covering working conditions, and that 117,176, or 66.5%, of said employees had expressed, by vote or otherwise as a result of conference a desire to negotiate rules and working conditions through employee-representatives, and that accordingly contracts respecting rules and working conditions had been entered into between the carrier and representatives of 149,918 employees apportioned among the several classes named to the Board. These contracts were put into full force and effect, and by their terms the parties thereto acquired mutual rights and assumed mutual obligations.

We further represented that since the Board had handed down its Decision No. 218 the company had held conferences with representatives of the several crafts with whom contracts had been made for the purpose of ascertaining whether or not, in the light of the said decision, said employees were satisfied with the manner of selecting representatives and with the rules and working conditions actually agreed to; and that as a result of said conferences the said employees, through their representatives, manifested their satisfaction not only with the manner of selecting representatives, but also with the rules and working conditions embodied in the said agreements.

The company thereupon asked the Board to vacate and set aside its Decision No. 218 and to find in pursuance of the Transportation Act: (a) that the company had the lawful

right to establish rules and working conditions in the first instance, either with or without first holding conferences with employees; and (b) that the contracts respecting rules and working conditions theretofore entered into by the carrier and its employees in the shop crafts are now in full force and effect without any further action on the part of the carrier and its employees in the said shop crafts.

The Board denied the company a further hearing upon any questions other than those involving matters connected with franchise rights and the election, the decision as to which the Board refused to vacate.

Another effort was made by the company to settle peaceably its controversy with the Board, and it respectfully submitted a reply to the Board's last decision, setting forth that the said decision was not responsive to the company's application, and it expressly represented to the Board that the company had not denied and was not now denying the jurisdiction of the Labor Board to hear and decide such disputes as fall within the purview of the Transportation Act, but it denied the right of the Board to invade the domain of management and to assert jurisdiction over grievances of whatsoever kind or character in connection with the employment, the discipline and the discharge of its employees.

Section 313 of the Transportation Act provides that the Labor Board, in case it has reason to believe that any decision of the Labor Board is violated by any carrier or employee, may upon its own motion, after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Upon our failure to comply with its decision the Board cited our company to appear before it in accordance with this section, and we appeared for the purpose of informing the Board that we could not accept as a lawful decision the declaration of the Board that the election under which the employee-representatives were chosen was illegal and that the rules and working conditions agreed upon by such employee-representatives and the management were void and of no effect.

This position was taken and maintained by the company because it was of the opinion that the Board had no jurisdiction

over the matter which was the subject of the decision. Conforming to the letter and the spirit of the Transportation Act, the carrier pledged itself to the principle of collective bargaining with its employees by and through the medium of employee-representatives of their own selection, and in good faith and with the cooperation of a large majority of its employees of all classes entered upon a policy which promised good and lasting results in promoting harmony of action and full understanding of conditions between employees and management.

A minority of employees, represented by System Federation No. 90, were opposed to employee representation and claimed the right to negotiate concerning rules and working conditions through the shop crafts' labor organization. This the company deemed subversive of its lawful right to deal with its own employees without the intervention of individuals or organizations whose manifest object is the denial of the fundamental right of employer and employee to deal in the first instance with one another respecting wages and working conditions in which they alone are directly interested. And, again, the company emphasized the fact that in cases of dispute in relation to wages and working conditions it has ever been willing to submit the dispute to the Labor Board and to abide by its decision in full acquiescence in and acceptance of the provisions of the Transportation Act.

The company stated that it had not "violated" any decision of the Labor Board in the sense that it had set at nought and refused to comply with the lawful pronouncement of the Board; neither had it "violated" any provision of the Transportation Act nor "defied" the Labor Board or the Congress which created it. On the contrary, the company has conceded the jurisdiction of the Labor Board to hear and decide such disputes as fall within the purview of the Transportation Act, and it is a willing party to several submissions now pending before the Board in the matter of wages and working rules and conditions.

The company further stated that in its opinion the Board in its said Decision No. 218 had without warrant of law exercised the functions of an administrative or regulatory body, and as such had assumed to invade the domain of management and to assert jurisdiction over matters solely referable to the func-

tions of railway management. The company believed the Labor Board to be under the law creating it not an administrative but a mediative body, and it pointed to the fact that the chairman of the Board had referred to the Board at one time as an "impartial mediatory body."

We further stated that we strongly deprecated any controversy with the Board with respect to the powers or jurisdiction conferred upon it by the Transportation Act, and, if compliance with the decision had involved no serious consequences, the company in order to avoid any controversy on the subject would have submitted to the decision, notwithstanding its belief that the Board had assumed a jurisdiction not conferred upon it by Congress. But the company, in the consideration of the question as to whether the directions of the decision should be observed, was obliged to determine whether the system of employee representation which it had inaugurated was to be impaired and its usefulness and value largely destroyed, or whether in order to avoid non-compliance with the decision it should, in considering and determining what rules governing working conditions should be established, consult with an organization which, the company believes, advocates (a) the closed shop, (b) the sympathetic strike, and (c) limitation of output, and which had been largely instrumental in framing rules governing the operation of shops during the period of Federal control. The company asserted that these rules had reduced the efficiency of shop labor on its lines to the extent of at least thirty-five per cent, and attention was called to the fact that the late Judge Prouty, when a member of the Railroad Administration, after an investigation made by him, publicly announced that upon the Pennsylvania Lines East labor upon that system was inefficient as compared with private operation, the percentage of inefficiency in some cases being as much as  $33\frac{1}{3}\%$ .

The company, therefore, respectfully represented to the Board that it should not consider Decision No. 218 as a lawful exercise of its powers and that the carrier should not be held by the Board as having "violated" a lawful decision of the Board; and the company reasserted its purpose and willingness to comply in all respects with the provisions of the Transportation Act and to submit itself to the jurisdiction of the Labor Board in all matters cognizable thereunder.

Notwithstanding this appeal, the company was informed that the Board was preparing a decision to be published to the world that the Pennsylvania Railroad Company had violated its decision and the law of the land. It was the opinion of the company that the purpose and intent of Section 313 is to induce and impel through the coercive force of public opinion compliance by any carrier or person affected by an order of the Labor Board with the terms and provisions of the same, and the company deemed it neither equitable nor just that it should be subjected to such coercive influence in respect to any order of the Board which the Board was without authority to make, and that, consequently, the Board should be restrained by an order of court from subjecting plaintiff to the coercive process prescribed by the said provision of the Transportation Act in respect to the order which the Company had declined to obey because the subject matter thereof was not within the jurisdiction of the Board.

Thereupon, a petition was filed in the United States Court and Judge Landis granted a temporary restraining order to prevent the publication by the Board that our company had violated any legal decision of the Board or had failed to comply with and observe the provisions of Title III of the Transportation Act.

The case finally came on for hearing before Honorable George T. Page, United States Circuit Judge, upon defendants' motion to dismiss the bill and a so-called answer which denies none of the averments contained in the petition. For the defendants, it was argued (1) that the Labor Board is an administrative arm of the government over which the courts have no jurisdiction; and (2) that the Board had the power exercised by it under Decisions 119 and 218. The court's finding on both points was adverse to the Labor Board's contention.

The court decided that "the appointment or method of election of conferees under Section 301 was not one of the functions delegated to the Board, and therefore it had not the right to make the regulations provided for in Decision No. 218," and it expressed the "opinion that the purpose of Section 301 was to leave to the carrier and its employees full liberty to get together in their own way."

The constitutionality of the act was sustained by the court,

and in this connection I desire to make it clear that it was and is the declared policy of our board of directors and executive officers not to question the constitutionality of the Labor Board provisions of the Transportation Act so long as the Board exercises its functions in accordance with the terms of the act. And in our bill of complaint, we raised the constitutional question only in the event that the court should find that the Board was acting within its legal powers. If so, it was our claim that the exercise of such power would deprive us of certain constitutional rights. The court sustained our contention that the Board had not properly interpreted the act, and we are satisfied with its finding in all respects.

Naturally, we are gratified by Judge Page's decision, not because of any pride of opinion sustained but because it may be known of all men that our company, in objecting to the Labor Board's decision, was actuated by an earnest and well founded desire to protect its legal rights and those of its employees from what we deemed to be an unwarranted assumption of authority on the part of the Labor Board.

As in the past, so in the future the Pennsylvania Railroad System will subject itself to the jurisdiction of the Board in strict conformity to the terms of the act, and it will abide by the Board's decisions unless they be of such a character as will necessitate or justify an appeal by the company in an orderly manner to the courts, or to the bar of public opinion. This privilege is enjoyed alike by all carriers and their employees.

I desire also to say that no feelings of hostility, personal or official, have been engendered between the Labor Board and our company, and that a fine spirit of cooperation has been displayed by the Board in the taking of steps to secure a judicial and authoritative determination of the legal questions which have been the subject of argument and consideration.

# LABOR POLICIES OF THE TRANSPORTATION ACT FROM THE POINT OF VIEW OF RAILROAD EMPLOYEES

W. N. DOAK

Vice-President, Brotherhood of Railroad Trainmen

SINCE I last had the pleasure of meeting with you, many changes have taken place in the industrial and economic situation of the country, and indeed it is a pleasure for me to be again honored with an invitation to meet with you and discuss briefly the industrial situation from the viewpoint of one who represents railroad employees. However, in appearing before you on this occasion it is in an individual capacity, and the views presented will be more personal than those represented by my organization or any other.

The organization that I have the honor of representing is not now, nor has it been, engaged in any of the disputes or the litigation mentioned by the preceding speaker.<sup>1</sup> The relations between the railroads and the employees in transportation service are very cordial in every respect and there is no question at present regarding the right of the employees' organization to represent the employees in our classes. Consequently, what I shall have to say at this time will be predicated on the fact that no such controversy exists so far as our group is concerned. Also I would have you bear in mind that we consider the employees engaged in conducting transportation as being somewhat differently situated from those engaged in other lines of railroad work. And for that reason we feel that probably some special consideration should be given to the employees engaged in this non-competitive occupation as compared with those engaged in a competitive occupation.

The public generally has become interested in wages of railroad employees and in the adjustment of disputes arising between the employer and the employee in the transportation industry. This has been brought about largely by public dis-

<sup>1</sup> Mr. Heiserman, see pp. 293-302.

cussion of these questions through the press and on the platform, and many different views have been expressed as to the importance of these problems and as to their proper solution. Extreme positions have been taken by those championing the cause of the employer as well as by those advocating the cause of the employee. Many public utterances have been made that tend largely to exaggeration. It is thought by many that such utterances have been largely prompted either by bias or through misinformation. It is therefore a commendable and a very desirable position that has been taken by your Academy in the discussion of these questions to bring together, as far as possible, the different elements, and obtain the different views, in order that you may have as nearly as possible the position of all.

There are those who hold that the labor organizations have gone far beyond the bounds of reason and propriety in their demands for wage increases and are unfair in their position in the adjustment of transportation disputes. On the other hand there are those who hold that the transportation companies have been exacting and unreasonable in their demands upon the employees. There is still another group that holds that both the carriers and the employees are unreasonable and unfair, and a large percentage of the public who are not fully informed of the facts believe that both the carriers and the employees are extremists and have gone beyond the bounds of reason and fair dealing.

As much as I should like to agree with these different elements, I must of necessity disagree with the large majority of the views that have been advanced and hold to a more reasonable and impartial view, one of justice and fair dealing to both the carriers and the employees. However, to arrive at what is right we should insist upon having the facts, and when the facts are produced then a correct judgment can be had. The one great trouble has been that attempts have been made to solve these problems on the basis of colored facts or half-truths for so long that a prejudiced and biased judgment has obtained in many instances. For instance, there are those who believe that the wage level for train and yard service employees should be based on the pre-war level, and there are others who as persistently contend that wages should be based on the war-time basis or one still higher. There are other who hold that

the cost of living should be the prime factor in determining such questions, and that the wage rate should be based upon a standard of living that would afford only the necessities of life, or in other words, provide enough food to prevent dissolution of the body, together with only a meager supply of clothing. Others hold that wages of railroad employees should be based upon the ability of the carriers to pay with a transportation rate at the lowest possible level. Still there are others who hold that the American public is only interested in having the lowest transportation rate possible, regardless of the financial ability of the carriers or the living conditions of the employees.

These are all wrong, and in my judgment the proper and legitimate position is that transportation rates should be fair and reasonable and afford a fair return on capital legitimately invested; and on the other hand the wages of the employees should be just and adequate to afford a proper American standard of living, which should not only provide food and clothing but allow for recreation, the education of the children, and give the employee the opportunity to lay aside funds for the care of himself and of his dependents in case of old age or disability. Wage standards and levels should be established independent of and separate from transportation rates. Neither should be dependent upon the other.

In the discussion of the reestablishment of pre-war levels, oftentimes the fact is not taken into consideration that if the war had not occurred conditions would have compelled a readjustment of the wages of transportation employees upward not later than the early part of 1917, because the wage cycle made such a readjustment imperative. If the European War had not come on and the United States had not been drawn into the World War and things had followed their usual course, an adjustment upward of the wages of train and yard service employees would have taken place about the time the United States entered the war. But with the advent of the European War in 1914, which caused a rapid advance in living costs, an adjustment should have taken place about the latter part of 1916. This was of course accelerated by the entry of our country into the war early in 1917, but no readjustment was made in wage rates until nearly the middle of 1918, and as a matter

of fact a complete and proper adjustment was never had in wage rates until long after the close of the war and then, in so far as train and yard service employees were concerned, did not reach a proper level. No sooner, however, was the last adjustment made than a clamor was started to reduce wages. The unfairness and injustice of this situation had an undesirable effect on the transportation employees because they had not received any advance at the time the other classes of labor received substantial advances, and at no time had the advance in wages kept pace with the advance in living costs.

The public mind was unduly and improperly preyed upon by a system of publicity and propaganda to such an extent that substantial justice was withdrawn from railroad employees and an undesirable and unfair estimate of the true situation arose. Naturally, when such agitation became rampant and the public mind became disturbed, as is always the case in such instances, the railroad employees were placed in a most unfair position, and generally speaking the public was ready to condemn them without a knowledge of the facts. Of course, for the time being the railroad employees felt that they were being unjustly and unfairly criticized and that it was impossible for them to obtain equal rights. They did not feel that the reduction in wages handed them by the United States Railroad Labor Board in 1921 was just and fair under the existing circumstances, but, rather than have trouble and turmoil, they finally bowed to public sentiment and respected the decision of the Board. Encouraged, as it seemed, by success in obtaining one reduction, the railroads immediately sought further reductions. These the employees bitterly and justifiably resisted.

This naturally had a tendency toward creating a fear in the minds of the employees that the governmental agency was being unduly influenced by the false propaganda being freely circulated over the country. At the same time there arose agitation for the repeal of state laws, laxity in enforcement of safety laws, and other agitation for inroads into the conditions of employment of the employees, many of which had been in effect for a quarter of a century or more, and the whole agitation was based on the false assumption that a reduction along these lines would result in a corresponding reduction in transportation rates. Of course such reductions in rates did not

follow, therefore the agitation has fallen flat to a great extent, and the public is beginning to take a more sober view of the situation.

The unsoundness of the theory that wages should be based on the ability of the carrier to pay is just as apparent as the falsity of the theory that rates can be fixed on a particular railroad on the basis of the density of traffic handled on that line, because the financial condition and ability to pay of the various railroads is just as diversified as the density of traffic on the particular lines. So the entire theory that a rate structure can be built up on individual systems or parts thereof on the basis of density of traffic, and on other systems or parts thereof on the small amount of traffic handled, is no more unreasonable or unscientific than the theory that wages should be fixed on the different systems on the financial condition or ability of the roads to pay. In both instances it has long been recognized by those who have studied the question that a rate structure must be built with the object in view of providing just and reasonable rates in given territories or in the country as a whole, and just so with the wage structure. It must be founded on a just and reasonable wage, irrespective of the ability of any particular carrier to pay this rate.

Unfortunately, beginning with the passage of the Adamson Law in 1916 by the Congress and a decision of the Supreme Court of the United States which in substance held that Congress had absolute authority over the transportation systems, the railroad labor situation has been the subject of entirely too much agitation and discussion. This has resulted in extreme positions being taken by the various parties interested and has been the cause of entirely too much public alarm and unrest.

Despite the much-heralded national peril of disputes on the railroads, there is no more real danger now, so far as a paralysis of transportation is concerned, than there was fifteen or twenty years ago. The plain truth of the matter is, there are certain people who use this question as a pastime and in most instances the matter is exaggerated to the greatest extent. Even if so, there are many worse things that could happen than to have a railroad strike occasionally. For instance, the practice of disseminating false, malicious and misleading statements is worse in its effects than any strike that could possibly take

place. Ever since the beginning of the railroad business in this country there have been different methods employed for the adjustment of disputes between the railroads and their employees, and for a brief review of these different methods your indulgence is asked for a few moments.

When the business was in its infancy, direct contact was had between the employer and the individual employee, but as the industry grew and expanded and more men were employed, individual contact was impossible and the employees were represented in small groups by local committees on different parts of the respective lines. This was extended from time to time until general committees representing the employees were organized to deal with the various operating officials of the lines as a whole. Later, when the railroads began to form group organizations for mutual benefit and protection, their example was followed by group organizations of employees, the latter generally being represented by the General Chairmen of the systems in such conference, until the eight-hour movement was started. It was then ascertained that the railroads were uniting as a whole in opposition to this movement, and finally a national conference committee of the railroads and the employees was agreed upon to handle this matter for the country as a whole. At the time negotiations were in progress, through a multiplicity of advertising, propaganda and other methods, it was pointed out that a national calamity faced the country and that if the eight-hour day became effective the railroads faced immediate bankruptcy, with the result that the National Administration and later Congress intervened and passed what was known as the Adamson Eight-Hour Law. This brought the industrial situation on the railroads into the national limelight.

For a number of years there was no Federal agency in existence that dealt with disputes on the railroads. Finally the Mediation and Arbitration Act came into existence. It was amended from time to time and became a real effective agency in the solution of these questions. In fact it afforded a method of accommodation in virtually all disputes until the eight-hour movement was inaugurated. As a matter of fact, there are a great many of us who hold the view that it would not have been a failure in this case had not undesirable publicity become rampant with regard to this question.

Immediately following the passage of the Adamson Eight-Hour Law, it became apparent that there were those who did not desire friendly or mutual relations between employer and employee in connection with disputes on the railroads, but who thought that a governmental agency should be established. Many hearings were held before the different committees of Congress, but no conclusion was arrived at up to the time that the United States entered the World War and the railroads were taken over by the Federal Government. Of course one of the first duties devolving upon the United States Railroad Administration was the establishment of an agency to deal with wages and working conditions on the railroads. There was first established the board to investigate and recommend wage increases. This was composed of four public men. After extensive hearings they arrived at the conclusion that substantial increases were necessary for the transportation employees. This was followed by the creation of a court of railroad wages and working conditions, bipartisan in character, consisting of six members, three from the railroad employees and three from the railroad management. The duty of this board was to investigate and recommend adjustment in wages and rules, and it continued to function until the railroads were returned to their owners. In addition thereto there were established boards of adjustment, bipartisan in character, to adjust disputes other than those arising over wage questions. These boards were likewise continued until they closed up all cases arising under Federal control.

When it became apparent that the railroads were to be returned to their owners, Congress directed its attention to the passage of suitable laws, including laws dealing with the adjustment of wage and other disputes on the railroads. This resulted in the establishment of what is known as the United States Railroad Labor Board, tripartite in character, with three representatives of the public, three of the railroads and three of the employees. In addition to this, the law contained a provision for boards of adjustment, bipartisan and voluntary in character, to handle disputes other than those arising from wage questions. Unfortunately however, such adjustment boards were not established promptly. The result was a general congestion of the docket of the U. S. Railroad Labor Board,

and this brought about further criticism and alarm as to the value of the tribunal.

During the consideration of this species of legislation, the railroad employees most strenuously opposed the enactment of the tripartite plan, but advocated the establishment of bipartisan boards, with appeal boards or a referee in case of a deadlock. However, despite their opposition, the Transportation Act became effective and the United States Railroad Labor Board was created and has now been in existence two years. There has not been sufficient time, in my judgment, to determine the value of the plan, and as a matter of fact a great deal of criticism, whether just or unjust, has been made of this plan. Personally, I have not believed that a tripartite plan is as desirable as a bipartisan plan, and I believe the future will fully justify my position. As a matter of fact, the experience of the past has to a certain extent justified my views with reference to this question. For example, the bipartisan boards dealing with the adjustment of disputes on the railroads have in every instance reached a conclusion and with as little criticism as seems possible, whereas the Railroad Labor Board has been the subject of most severe criticism and agitation. My principal objection to a plan of this kind has been that no industrial court yet known has proved a success. This was true of the thorough trial of this species of legislation made by Australia and the Australasian countries. The so-called Industrial Court of Kansas is going through a most severe test, and I am of the opinion that it is less effective than those systems where the disputants have equal representation, and that it must ultimately fail.

Compulsory arbitration in this country in the strict sense has not been resorted to in the adjustment of disputes of this character, but instances may be cited which have been tried in foreign countries and proved a failure in each instance. I personally believe that such a law could not be passed in this country and be effective, because it seems repugnant to our form of government.

The most effective results in this or any other country, judged by the experiences of the various countries, have been from mediation, conciliation and voluntary arbitration, and the most effective remedy in the form of a law in the United States has

been the Erdman Act, later succeeded by the Newlands Act, which was displaced by the Transportation Act of 1920.

Observation and investigation of labor disputes lead me to believe that mediation is the most effective and desirable plan, and when it is coupled with conciliation and voluntary arbitration it is almost certain to afford an accommodation in every instance.

Whether or not the United States Railroad Labor Board will succeed and be a satisfactory and effective means of settling labor disputes on the American railroads, depends upon the character, ability and fitness of its members and its freedom from entangling alliances and political entanglements. In the selection and maintenance of this Board partisanship and favoritism must be cast aside, and practical, experienced and impartial men placed thereon. Any interference or undue influence exercised by the Congress or the executive will tend to disrupt and destroy this agency. Mutual respect by the railroads, the employees and the public must be given it or it will fail. Likewise its conduct must be such that it will command the respect of each of these parties. It cannot, however, handle all the disputes over wages, rules and conditions of employment and function with any degree of satisfaction, and if it is continued there must of necessity be other and additional agencies established and maintained auxiliary thereto.

Penalties for strikes and lockouts in the existing law are not desirable, and in my opinion are objectionable to our form of government. Therefore I consider it wholly unnecessary to place such penalties in the law and I disagree with those who advocate putting so-called "teeth" in the law.

This brings us then to specific conclusions as to a proper solution of railroad labor disputes, and I would suggest the following:

1. The reestablishment of the Board of Mediation and Conciliation, with the right to bring about, if possible, voluntary arbitration.
2. The establishment of bipartisan boards of adjustment, on which the railroads and the employees are equally represented.
3. The reestablishment of the rights of the respective parties to adjust any dispute by mediation, conciliation or voluntary arbitration if possible, before reference to any board.

4. The maintenance, if necessary, of a board to act as referee, which for the time being, until otherwise changed, would be the U. S. Railroad Labor Board; this Board to be appealed to only in case of deadlock by bipartisan boards or in case of failure to adjust any dispute through mediation, conciliation or arbitration.

5. The establishment of a system or plan by which exact facts concerning wages, grievances and conditions of employment may be accurately obtained in a fair and impartial manner. The prohibition by law or otherwise of the circulation of propaganda concerning railroad disputes which has the tendency of alarming or inflaming the public mind.

# LABOR POLICIES OF THE TRANSPORTATION ACT FROM THE STANDPOINT OF THE PUBLIC GROUP

HENRY T. HUNT

Former Member of the United States Railroad Board

**A** DECISION construing several sections of Title III of the Transportation Act and determining the powers of the Railroad Labor Board has very recently been handed down by the United States District Court for the Northern District of Illinois, Judge Page, Circuit Judge, writing the opinion. As this decision is the law until modified by higher authority, it may be illuminating to examine it.

The Labor Board had, it appears, found that the Pennsylvania Railroad had not complied with one of its decisions and was about to publish its finding to that effect. The Pennsylvania then applied to Judge Landis for an injunction restraining the Board from such publication, and a temporary order was issued which the Board endeavored to get set aside. After a delay of many months, Judge Page last week rendered his decision refusing to dismiss the injunction.

The Labor Board had proceeded against the Pennsylvania as authorized by Section 313, which follows:

Section 313. The Labor Board in case it has reason to believe that any decision of the Labor Board or of an adjustment board is violated by any carrier or employee may upon its own motion after due notice and hearing to all persons directly interested in such violation determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

The authority conferred by the above section on the Board to publish its finding that railroads or employees have violated its decisions is the only express sanction provided by the Act toward making these decisions effective. Were it not for the procedure set out in this section, a railroad or an organization of employees might issue false propaganda to the effect that it had obeyed the decision or that the decision did not apply to it or that the board had no jurisdiction to make such a decision,

and so befuddle the public as to the situation that public opinion could not function. Congress did not give the Board arms to enforce its decisions, but did give it a voice whereby it might charge a recalcitrant with disobedience and convict it before the bar of fair-minded men by means of the marshaling of unassailable facts.

In this particular case the injunction issued by the Court has the effect of preventing the board from informing the public as to the facts in the controversy between the Pennsylvania Railroad and its shop employees. Official information as to the facts relating to this controversy is of very great importance, at least to the students of politics in industry. It would, therefore, seem to be worth while to examine the decision in detail and to ascertain, if possible, whether it rests upon secure foundations.

In order that the decision may be understood, certain recent railroad history must be recited.

In March, 1920, a dispute was pending between practically all the railroads and all their employees as to what should constitute reasonable wage rates and reasonable working rules. Representatives of the parties had conferred but could agree on nothing. On April 16, 1920, the entire dispute was submitted by both parties to the Railroad Labor Board for decision. The Board decided the wage portion by Decision 2 of July 20, 1920, but reserved the rules portion for further consideration.

By its Decision 119 of April 14, 1921, the Board—"Called upon the officers and System Organizations of employees of each carrier parties hereto to designate and authorize representatives to confer and to decide so much of this dispute relating to rules and working conditions as it might be possible for them to decide." This Decision 119 was, then, a request made of the carriers and employees to aid the Board to arrive at a decision as to what should constitute reasonable rules and working conditions by agreeing on as many of said rules as they could.

A new dispute arose on the Pennsylvania Railroad as to the proper procedure to carry out the Board's request. Certain organizations of its employees contended that representatives should be elected in a certain manner, but the railroad com-

pany disagreed with this proposal and insisted on carrying on the election in quite a different fashion. The officers of the company and of these organizations of employees conferred on the subject but still failed to agree. Application was then made by the chief executives of the organizations of employees directly interested to the Board for its decision. The company also appeared before the Board, put in its evidence and argued in support of its position.

By its Decision No. 218, the Board decided the dispute presented by the employees' organization, which dispute had not been decided in conference, although conference had been had. By this decision the Board established rules of procedure for the election of employees' representatives on the Pennsylvania Railroad in order that the request of the Board in Decision 119 might be carried out. No question was raised by the railroad at the time as to the satisfaction of the requirements for conference imposed by another section of the act, Section 301.

Afterwards the employees' organizations informed the Board that the Pennsylvania Railroad was not obeying its Decision 218 and accordingly the Board took proceedings under Section 313 to ascertain whether the Pennsylvania had violated this decision. Apparently it determined that the railroad had done so and was about to make its finding public when it was enjoined.

Judge Page, in the opening paragraph of his opinion, thus states the case:

This is a bill by the Pennsylvania Railroad Company against the Labor Board and its members to enjoin them from functioning as a board generally and specifically from exercising the asserted right to control the selection of the referees provided for in Section 301 of the Transportation Act.

Two claims were urged. (1) That the Act is unconstitutional if, and in so far as, it attempts to impose compulsory arbitration, and (2) that the Act gives the Board no right under *ex parte* submission nor under its own motion to do any act under Section 301.

This statement of the nature of the proceeding does not aptly describe it. The Board was not, as is stated, attempting to exercise the asserted right to control the election of the conferees provided for in Section 301, but was asserting the right to publish a decision finding the carrier had not obeyed its Decision 218. This decision interpreted the "call" of the Board in Decision 119. The conferees on the dispute which

No. 218 decided had duly conferred and had disagreed. The Board did not attempt to control their selection. The chief executive of one of the parties had applied to the Board for a decision of that dispute. In the controversy which Decision No. 218 decided, there was no question that the representatives of the employees in that dispute were properly authorized and designated to confer nor that they had conferred and had disagreed.

The opinion considers and apparently decides four points as follows:

(1) The Labor Board is a body corporate subject to the jurisdiction of the Federal Courts and may sue and be sued.

(2) The appointment or method of selecting referees under Section 301 was not one of the functions delegated to the Board and therefore it had not the right to make the designation provided for in Decision 218 on pages 8, 9 and 10.

(3) As to other matters than those jointly submitted to the Board under Section 301, the decisions of the Board are only advisory, but as to jointly submitted matters legally enforceable.

(4) Title III of the Transportation Act is constitutional and confers on the Labor Board the right to prescribe compulsory arbitration and to fix wages under such compulsory arbitration.

The language of the court is not altogether distinct and without ambiguity, but it is believed the above constitutes a fair statement of the decision on the points covered by the opinion.

The first point needs no particular discussion.

It is believed that the decision of the court as to the second point is erroneous. Section 301 of the Transportation Act reads as follows:

Section 301. It shall be the duty of all carriers and their officers, employees and agents to exert every reasonable effort to adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer with the carriers or the employees or subordinate officials thereof directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the Board which under the provisions of this title is authorized to hear and decide such dispute.

The relevant portions of Section 307 should also be cited:

Section 307. (a) . . . Labor Board (1) upon the application of the Chief Executive of any carrier or organization of employees . . . whose members are directly interested in the dispute, (2) . . . (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing and as soon as practicable and with due diligence decide any dispute involving grievances, rules, or working conditions which is not decided as provided in Section 301. . . . (b) The Labor Board (1) upon the application of the Chief Executive of any carrier or organization of employees . . . whose members are directly interested in the dispute (2) . . . or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing and as soon as practicable and with due diligence decide all disputes with respect to the wages or salaries of employees . . . of carriers not decided as provided in Section 301.

It has always been the construction of the Board and of officers of carriers and of organizations of employees that Section 301 stated the duties of such officers and employees of carriers with reference to railroad labor disputes. They have never understood that Section 301 imposes any duty on the Board.

It is also the construction of the Board and of such officers that Section 307 is the section which confers jurisdiction on the Board to decide disputes as to working conditions or as to wages and prescribes the manner in which such disputes shall be presented to the Board.

It has also been the belief of the Board that it had power to decide any dispute on which conference had been had or attempted by either party, and which was presented upon the application of the Chief Executives of carriers or of organizations of employees, if the dispute involved grievances, rules, or working conditions or wages or salaries of employees.

As appears by Decision 218, the Board believes that a dispute as to whether representatives were duly designated and authorized to confer was a dispute involving grievances, rules or working conditions which it had power to decide under Section 307. It has been convinced that a dispute relating to the proper designation or authorization of representatives should be interpreted as coming within the meaning of the words "grievances, rules, or working conditions." It could not well decide whether the method adopted in the dispute was a reasonable rule without deciding what a reasonable rule would be. Section 307 (d) provides that all the decisions of the Board in respect to working conditions shall establish stand-

ards of working conditions which are just and reasonable. A method of selecting representatives to confer is a "working condition". Experience has shown that controversies as to whether persons claiming to represent a particular class do so are very frequent and of great importance in railroad operation. The right of members of organizations of railroad employees to select their representatives as they see fit and to select whom they see fit is among the most cherished rights of railroad employees. It has been the subject of many controversies. Its denial by railroad officers has been a frequent cause of conflict and of discontent. The court's decision in this respect apparently goes to the length of holding that the Board has no power to decide a dispute which concerns only the question whether particular persons claiming to represent a class really do so or to decide what is the correct and legal method of determining who are qualified representatives. This denial of power goes to the very essence of Title III. If the Court's decision in this respect is not reversed, it will destroy the efficacy of that title as means to prevent interruption of railroad operation by labor disputes.

It would appear to be clear that there can be no dispute cognizable by the Board unless the subject of dispute is adopted as such by an organization of employees or by 100 unorganized employees who are really organized for the purpose of presenting the dispute. If a carrier may decline to confer with the representatives designated by the organization according to its laws and the Board has no power to decide whether the railroad officers are under a duty to confer with the said representatives, the effective power remaining to the Board is little more than a power to collate statistics. The court by this decision, has, in my judgment, disemboweled Title III. The right of organizations of employees to select what representatives they see fit has been long acquiesced in by practically all the railroads of the United States. The Pennsylvania Railroad is the only notable exception. In the past this railroad has generally claimed the right to decide with what representatives it would confer.

The result of this decision, in effect, is to enable the officers of carriers to decide with what persons claiming to be representatives of employees it will confer. The Board according

to the court has no power to correct their decision. The decision destroys the efficacy of Section 301 as a mandate to officers and employees of carriers to confer and to decide their disputes in conference if possible. Naturally the employees can confer only by representatives. If the carrier may decide finally who are representatives of the employees, it is clear that the representatives so designated by the carrier may not be those whom the employees wish to represent them. As the representatives selected by the carriers to represent the employees may not, in fact, represent them, it is clear that the employees will not be bound by the agreements entered into by the representatives recognized only by the railroad officers. There may be conference and agreement between the conferees but the agreement will get nowhere. Railroad employees will not permit railroad officers to select their representatives.

It is respectfully urged that the court in this respect is in error. Railroad employees have a right to organize and the members of the organizations have a right to choose such representatives as they see fit and it is the duty of officers of carriers to confer with the representatives chosen by the members of the said organizations. It must be within the power of the Board to decide whether the representatives claiming to represent the members of organizations do in fact represent them, if the Board is to function.

As stated above, the fourth matter decided by the learned judge is that Title III provides for compulsory arbitration and that it is constitutional. Yet it is decided that prior to reference to the Board as arbitrators of the dispute there must be conference between representatives of the parties. It is further decided that one party may recognize whom it pleases as the representatives of the other party and that the Board may not review this decision. Therefore, the court has decided that railroad employees are required by law to confer by representatives but that the management can select their representatives; that the representatives so selected and the management may jointly refer the dispute to the Labor Board; that the representatives selected by the management to represent the men may present evidence and arguments to the Labor Board; and that when the Board has heard the representatives selected by the management to represent the management and the repre-

sentatives selected by the management to represent the men, the Board may decide the matter and the employees of the railroad concerned are bound by law to obey the decision of the Board.

Judge Pages states that the decision of the Board on disputes jointly referred by the parties is binding and may be enforced by court proceedings.

The dispute must be jointly referred by the parties. And who are the parties? The parties must be the railroad company and the organizations of employees conferring through representatives. Who is to refer the dispute? The words of Section 301 are "it shall be referred by the parties." The parties to a reference are not the representatives or delegates conferring but the persons or organizations they represent. Under Judge Page's decision it would appear that it is the representatives who must jointly refer the dispute. If the dispute is referred by the representatives of the management selected to act for the management and the "representatives" appointed by the management to act for the men, what becomes of Section 307? That is the only section conferring any power on the Board to decide disputes. It can act only upon the application of the Chief Executive of any carrier or organization of employees whose members are directly interested in the dispute unless it intervenes on its own motion because the dispute is likely to interrupt commerce substantially. As the carrier can in effect select the representatives of the employees under the court's decision, to get the matter "arbitrated" by the Board it must necessarily also select the Chief Executive of the organization of employees to refer the dispute. It would seem, therefore, that not only has the court in effect rendered organizations of employees impotent to select their own representatives to confer under Section 301 but it has also in effect authorized the management to select the Chief Executive for the organizations of employees. The court has apparently authorized the railroad companies to create organizations of employees of their own to handle rights provided and duties imposed by Title III.

The court decides, however, that the Chief Executive of an organization of employees may make application to the Board for decision of a dispute and that the Board must decide it.

In this case, however, the Board's decision is only advisory and can not be enforced by legal proceedings.

Probably the Board is also without power to look into the qualifications of the Chief Executive claiming to be such. If the Board may not decide who are qualified conferees it may not decide who are or are not "Chief Executives." Railroad employees must thus receive such wages and work under such working conditions as the Board decides are just and reasonable after hearing representatives of the management only.

Section 309 provides: "Any party to any dispute to be considered by the Labor Board shall be entitled to a hearing either in person or by counsel." As apparently under the court's decision the parties to the dispute may consist entirely of representatives satisfactory only to the management, it is only representatives of the management who are entitled to such hearing.

The opinion finds that the decision of the Board has a different effect according to whether the dispute comes before the Board by joint submission under Section 301 or by application of the Chief Executive of a party. If by the first method, the decision of the Board is binding and can be enforced by legal proceedings, if by the second method, the decision is merely advisory. If the carrier goes to the length of selecting a "Chief Executive" as well as representatives for the men, it may get a binding decision.

It is believed that this is an error; parties have only one method of getting a dispute before the Board for decision. This one method is set out in 307, viz. by application of the Chief Executive of a carrier or of an organization of employees directly interested or by application of 100 or more unorganized employees.

This provision was adopted by Congress in part to avoid the reference of trivial disputes to the Board. It was believed that the Chief Executives of the carriers and of organizations of employees would refer only matters of consequence. Congress also understood that the Chief Executives of carriers and of organizations of employees had adopted definite policies with reference to wages and working conditions and it was believed desirable to put them in a position to control reference of disputes.

The inference from the court's decision is that the parties

to the dispute are the representatives conferring. If this is the case, these representatives may apparently, under his decision, refer what they wish without reference to the Chief Executive. Thus disputes, for example, between shop foremen and employees on trivialities may be referred to the Board for decision. The effect of this will be, of course, to swamp the Board with unimportant disputes. The requirement imposed by Congress that the Chief Executive make application imposes on him the duty of weeding out matters of slight importance.

As the Board makes rules and wage rates for almost two million men and its decisions have involved hundreds of millions of dollars, it ought not to be troubled with matters which responsible officers can themselves settle.

The judge finds that the Board's decision under an application not jointly submitted by both parties to a dispute is advisory only. Decision 218 was a decision upon the application of one party, viz., the labor organization. Hence, under the judge's construction, Decision 218 was advisory only, yet he refuses to dismiss an injunction against the publication of this advisory decision. It seems remarkable that the Board may not even render its advice without doing irreparable injury to the Pennsylvania Company.

Of course, it may be that the decision is intended to restrain the Board from the expenditure of public money to publish a decision which it had no authority to make. This is not stated, but conceivably it might be rested upon that ground. The argument would be that the law gives the Board the right to decide only disputes involving grievances, rules and working conditions, whereas a dispute which relates to a question whether particular persons are in fact duly designated representatives of the parties is not a dispute involving grievances, rules and working conditions. Yet it would appear that Congress must have intended a dispute involving those subjects to be within the powers of the Board to decide. The paramount object of Congress as is shown by an examination of the entire act was to prevent interruption of operation growing out of disputes between railroads and their employees. Certainly a dispute as to who should be the representatives of employees is one which might well bring about interruption to

operation. When the tribunal created by Congress to decide disputes tending to interrupt operation is prevented from deciding one of the main subject matters of disputes, a subject matter which experience has shown is among the most passionately asserted and strongly maintained rights of workmen, the power of that tribunal to function effectively is almost fatally injured.

It would seem to be clear that Congress intended the Board to have jurisdiction over all disputes tending to interrupt operation; that a dispute as to what persons are properly recognizable by railroad management is one tending to interrupt operations; that such a dispute involves grievances, rules and working conditions; that Decision No. 218 of the Board was within this jurisdiction; that the Board had power to determine whether the Company had violated its decision and to publish its decision. It is believed, therefore, that the court should have overruled the injunction instead of continuing it.

If this line of reasoning is valid, Judge Page's decision cannot be considered a correct determination of law. It is earnestly hoped that the Board will take steps to secure a review of this decision by the Court of Appeals and by the Supreme Court. If such action is not taken the discontent already existing in railroad service will be enormously increased.

## THE FARMERS AND THE RAILROADS

HENRY C. WALLACE

Secretary of Agriculture

**A**GRICULTURE is our greatest industry ; transportation our second greatest. These two industries are dependent upon one another, and the national well-being is dependent upon both. The failure of either to function efficiently results in widespread inconvenience, financial loss, and quite possibly national disaster.

Agriculture and railroad transportation have developed together, each making the rapid extension of the other possible, and together they have contributed to the rapid development of the country. Perhaps exploitation is a more truly descriptive term of what has happened through the rapid extension of agriculture and transportation during the past sixty years.

Intelligent consideration of the subject assigned to me requires a brief historical review. As population increased along our eastern and southern coasts, the farmers pushed up the navigable streams, using them as a means of transporting their surplus to market. Until the middle of the last century the occupation of the land was proceeding in an orderly manner, farming being extended as the need for food increased, and industry following close after as the country settled up and the cost of transporting manufactured products made it more economical to carry the factory closer to the farm. Frontier agriculture and pioneer settlements were based upon the principle of self-sufficiency, and the commercial surplus was limited to products which were valuable in relation to weight and bulk and could be easily preserved and transported in the pack. Each pioneer farm family itself produced most of the things necessary to its living. The growth of the cities and settlements nearer the sea stimulated the desire for transportation of farm products from farther back in the country and led to the building of canals reaching rich agricultural areas. The building of the Erie Canal, for example, made possible the maintenance of the growing population of New York City, since

it tapped the fertile wheat-producing areas and assured an abundant supply of bread at a reasonably low price.

The development of rail transportation, the invention of labor-saving farm implements and the liberality of the Government in the disposition of its lands resulted in the most remarkable period of agricultural expansion and industrial and urban growth the world has ever seen. In 1860 there were about 30,000 miles of railroads in operation, mostly east of the Mississippi. By 1900 there were almost 200,000 miles. In 1860 there were about 407,000,000 acres of land in farms, much of which was not being intensively cultivated. By 1900 the land in farms had more than doubled, and was being much more thoroughly cultivated. Coincident with this development of transportation and expansion of agriculture came the improvement in ocean shipping, bringing the markets of Europe closer by at least one-half because of the reduction in shipping rates. Within the lifetime of one generation, therefore, we opened up a vast agricultural empire and our country became the greatest producer of agricultural surplus in the world. A fertile soil suited to extensive farming operations, the rapid improvement in labor-saving implements, cheap transportation both by rail and water, and ambitious, energetic, hard-working farmers, eager to possess the land, combined to produce a flood of cheap grains and live-stock which brought disaster to the farmers of the east and even compelled important readjustments by farmers in the older settled countries of Europe.

Had our railroads been extended into the west only as the growth of our population made necessary an increased supply of food, it is reasonable to suppose that freight charges would have been fixed at figures which would have made sure of operating costs and a fair return upon the capital invested. Under such conditions it is reasonable to suppose further that manufacturing and industry, and with them a consuming population, would have moved westward following the extension of agriculture. But a different policy was followed. Our people were possessed of a fever to occupy the country. Land grants and subsidies of all sorts were offered for railroad-building, and as these new roads were necessarily dependent for their principal revenue on agricultural tonnage and tonnage on goods

the farmers would buy, freight rates were based on what the traffic would bear, rather than on what might be shown to be a fair charge for the service rendered based on operating costs and interest on the actual investment. Thus rates on grain were fixed at a point which would not discourage the growing of grain, while rates on live-stock were so adjusted as to come just within the point at which the stockman could better afford to ship than to make his stock walk to market. In those days of western development it was the policy of railroad managers to foster agriculture along their various lines, for the very good reason that they depended upon agriculture for a living. Low rates were made for long hauls of farm products. This gave cheap food to eastern industrial centers and gave the railroads long hauls back on manufactured products. The traffic departments of the western roads courted the farmer and stockman. Their products were moved promptly. In the case of live-stock, the shipping time from western points to the central markets was shorter thirty years ago than it is today.

As the country settled up and towns and villages in the west grew into small cities, the policy of low rates for long hauls both of agricultural and manufactured products was continued. Efforts to establish industrial enterprises in great surplus-producing states west of the Mississippi were systematically discouraged, even to the extent of making grossly discriminatory rates against such enterprises. Those were the days before government supervision or control of rates. The railroad manager was a law unto himself, made rates according to his own sweet will, and made and unmade individuals and communities in his own interest and the interest of his own road. He conceived it to be to the advantage of the railroad to keep the farm and the factory as far apart as possible in order that the railroad might haul their respective products the longest possible distances. It was this high-handed policy which caused the enactment of the famous granger laws and later the interstate commerce law and the creation of the Interstate Commerce Commission with government control of rates and practices.

In the foregoing I have tried to make clear that western agriculture has been developed on freight rates made with a view to encouraging the movement of farm products long distances to central processing and consuming markets, such rates

of course being adjusted roughly to the bulk and value of the crop to be moved. It necessarily follows that the character of the farming and the value of the land and improvements were determined by this policy, and that any marked change in the policy, even if adhered to for but a relatively short time, is bound to make necessary profound changes in both agriculture and industry.

During the years from 1890 to 1917 the Interstate Commerce Commission was kept busy hearing appeals from shippers for rate changes and adjustments, and during the latter part of that period the railroads made several appeals to the commission to permit substantial advances in rates. The requests from shippers were mostly for a more equitable adjustment of rates as between communities or regions and as between commodities, in the effort to remove discriminatory rates which were the inevitable result of the purely arbitrary and unscientific methods of rate-making which had been followed during the period of exploitation. It was during this period that we began to form a conception of just railroad rates, based not upon what the traffic would bear but upon a fair return to capital actually invested, or the fair value of the property, plus a return sufficient to cover operating charges and adequate upkeep under competent management. As a necessary preliminary to the determination of such just rates Congress provided for a complete physical valuation of all the railroads of the country, and this stupendous undertaking was begun during the period indicated.

When the railroads were taken over by the government it was with the understanding that they should be assured a net return equal to the average net return of the three years just preceding, which happened to be the most prosperous three-year period the roads had ever experienced. No measures were taken to control wages or the other factors which entered into the cost of operation and maintenance. It was simply another way of applying the utterly vicious cost-plus policy and added much to the burden of debt under which our people will be laboring for a generation yet to come. During this period of government operation prices of most commodities rose to the highest point ever known. Intelligent railroad operation, therefore, would have justified increases in freight

charges fairly comparable with the increases in the values of the commodities, with a view to holding down the amount needed to make good the government guarantee. Some increases in rates were made, but not enough to meet the increase in expenses. Costs of operation were permitted to increase almost without hindrance, and in the case of wages, the largest cost item, with government acquiescence and even encouragement. Thus when the time came to hand the roads back to their owners they were in such condition that they seemed to require very large increases in freight rates if they were to be kept out of the hands of receivers. Just at the time, therefore, when we were entering the period of severe liquidation and prices of commodities and especially of agricultural products were falling with great rapidity, burdensome rate increases were put in force.

The blighting effect upon agriculture can hardly be comprehended. I would not be understood as suggesting that the increases in freight rates were wholly responsible for the unprecedented depression through which our agriculture has been passing and which for a time threatened a financial disaster of nation-wide scope, but these higher rates contributed materially to this depression and if continued will require changes in agriculture and industry of national and international importance. Transportation is an essential part of the process of production. Transportation costs are a part of production costs. Any material advance in the cost of production without a corresponding advance in the price received for the product involves important readjustments. During the past year the farmer has been compelled to accept for his products, whether grain, live-stock, cotton, wool, or fruits and vegetables, prices which are on the average no greater than those which prevailed during the pre-war period, meaning by the latter the five-year period 1910-14 inclusive. For a time the prices of some of the coarse grains were as much as forty per cent below the pre-war average, and the prices offered the farmers in some of the vegetable-growing regions were so low that they did not cover the cost of harvesting and preparing for shipment. During the same period freight rates on agricultural products have been on an average about eighty per cent above the rates which prevailed before the war. An illuminating

illustration of just how the farmer is affected by this condition is furnished by the investigations of the Congressional Commission of Agricultural Inquiry. Four standard implements needed on the western grain and stock farm are a gang plow, a wagon, a corn-harvester and a grain-binder. On August 1, 1913, the cost of these implements at certain points in Kansas and Nebraska was \$490.50, which was equivalent to the farm price of 928 bushels of corn. The freight charge to Chicago on the number of bushels of corn required to purchase these implements at that time was \$122.16. On August 15, 1920, the cost of these implements was \$944. This charge was covered by the price received for 706 bushels of corn, but the freight charge on the corn was \$179.30. On October 15 the cost of the implements had been reduced to \$751, but it required the value of no less than 4,191 bushels of corn to purchase them and the freight on the corn was \$1,051.41. Similar illustrations in unlimited number can be furnished to show the blighting effect upon agriculture of advances in freight rates without regard to the value of the products to be moved.

Perhaps a more understandable way to show the effect upon agriculture of a continuance of the present freight rates is by noting the additional charge per crop-acre which they impose. Under the old rates a great fruit industry was built up in California. It is estimated that the freight charge paid by that State in 1920 was about \$64,000,000. The increase in freight rates during the past four years imposes an additional charge per acre on lemons of \$187.67, which capitalized at 7 per cent would amount to \$2,681; on oranges an additional acre tax of \$192.38, which capitalized would amount to \$2,748.28; on apples \$160.87, which capitalized would amount to \$2,298.14. Approximately the same burden is imposed upon the fruit industry of the entire northwest and the truck industry of the southwest, the source of a large supply of vegetables of all kinds.

In the case of the less valuable crops, such, for example, as corn, wheat, potatoes and cotton, the increased tax per acre imposed by the present freight rates does not seem to be so great when presented in figures, but is in fact relatively as great. For example, the increased rate tax per acre on corn, wheat and oats, and cotton is greater than was the net return

per acre to the farmer during the pre-war period. In the case of potatoes the increased rate tax per acre in Maine amounts to \$31.80, and in Michigan and Louisiana, both great potato-producing regions, the increased rate tax per acre is above \$15, which, because of the lower yield, is relatively as great as the increase in Maine.

When it is remembered that prior to the war agricultural production yielded to the average farmer nothing more than a fair living, and, indeed, less than this had the farmer demanded a fair interest charge on his money invested in land and farming equipment, the impossibility of maintaining production under the imposition of a rate tax as great as has been indicated at once becomes apparent. Either freight rates on agricultural products and on the principal commodities the farmers need to buy must come down quickly to about pre-war levels, or prices of agricultural products must increase sufficiently to equal the increasing freight rates, or there will be profound readjustments in agricultural production, and these will involve readjustments in industry as well.

Cherishing the hope that present high freight rates are temporary, the farmer is struggling to continue his farming operations without material change, and in the meantime casting about for ways by which he may overcome the handicap imposed upon him. The fruit- and truck-growers of the far west and southwest, for example, are turning to water transportation, and with the better adaptation of vessels to their needs may find in his way some measure of relief from the high freights. The wheat-growers of the west also are using the shorter haul to water for export grains. To illustrate what is happening in this respect, fifty-three per cent of the wheat exported from this country in 1913 went out through the Atlantic and Canadian ports. In 1921, only twenty-four per cent passed through the eastern ports. In 1913, the Gulf ports handled thirty-one per cent of our export wheat, and in 1921 slightly more than fifty-nine per cent. Last year the east-and-west rail lines, which formerly handled the bulk of our grain, were running small trains with light loads, while the north-and-south lines in the surplus-producing country, which had formerly handled less than one-third of our export grain, were hauling long trains, heavily loaded, and our southern ports

were congested with cars of grain waiting for ships that they might be unloaded.

If the American farmer is to compete successfully with the Argentine or the Australasian farmer in the markets of Europe, he must be able to lay his products down in Europe at a cost approximately the same as his competitors. The two principal competitive factors entering into the cost of marketing agricultural products in Europe are the cost of production and transportation. I shall not attempt to go into the question of cost of production, but shall confine myself to a comparison of the cost of transportation from the wheat-producing centers of the United States and Argentina to the United Kingdom. It may be well at the outset to point out that while the cost of ocean transportation is an important factor in the cost of marketing agricultural products in foreign countries, it is by no means as important a factor as rail transportation to the seaboard, particularly in the United States, where our producing centers are located much farther from the seaboard than are the producing centers of Argentina, Australia, and other countries that compete with the United States. In Argentina, for example, the average rail haul from the wheat-producing regions to the seaboard is approximately 435 kilometers, or 261 miles. The cost of carrying 1,000 kilograms (2204.6 pounds) of wheat a distance of 500 kilometers (310.6 miles) is \$15.44 Argentine paper, or \$0.15 per bushel in United States money on the basis of the prevailing rate of exchange. With an ocean freight rate from Buenos Aires to Liverpool of \$5.00 per ton, this would make a rate of \$0.134 per bushel, or a combined rail-and-ocean freight rate from the wheat-producing centers of Argentina to the United Kingdom of \$0.284.

In the United States the export freight rate on wheat from Hutchinson, Kansas, to Galveston, Texas, through which a large part of our wheat is exported, is \$0.44½ per 100 pounds, or at the rate of \$0.267 per bushel. The ocean freight rate from Galveston to the United Kingdom is \$0.21 per 100 pounds, or at the rate of \$0.126 per bushel. This makes a combined rail-and-ocean freight rate from Hutchinson, Kansas, to the United Kingdom of \$0.393 per bushel, as compared with a total rail-and-ocean freight rate from the wheat-producing centers of Argentina to the United Kingdom of \$0.284 per

bushel. The wheat producer in Argentina thus has an apparent advantage of approximately \$0.11 per bushel in the cost of transportation alone.

In the case of crops for domestic consumption grown in the great surplus-producing states east of the Rocky Mountains, water transportation is not available. The farmers in these states must use railroads to ship their surplus to market and the continuation of the present high rates must inevitably reduce the tonnage of coarse grains and hay shipped to the east. We hear some criticism of the agricultural schedules of the tariff bill now under consideration by Congress. In point of fact, the duties proposed to be levied upon the principal agricultural products are hardly sufficient to equalize the additional freight tax which already has been imposed upon the farmers of the surplus-producing states. The increase in railroad rates during the past five years has been in effect a differential against our own farmers in favor of the farmers of foreign nations with whom they must compete.

A few examples are given below in order to illustrate concretely the effect that high freight rates, if continued, are certain to have, not only on farming but on the railroads themselves.

In the case of a cheap bulky commodity like potatoes high transportation costs will have an important effect on the distribution of acreage. At present the commercial production of this crop is more or less concentrated in the northern border states, the central states obtaining much of their supply from those to the north of them. But when the freight rate on potatoes from Bangor, Maine, to New York City increases from 25c a hundred pounds in 1913 to 52½c in 1921, a differential is established in favor of the growers in New York, New Jersey, Pennsylvania and Connecticut that will undoubtedly increase the acreage in those states and make necessary a reduction of acreage in the State of Maine. This will deprive the railroads of a large and remunerative traffic. These rates have the effect of decreasing the profit on potatoes in Maine by 25c per hundred pounds, which makes it possible for other regions nearer the market to compete. Since 1913 there has been an increase in rates on Michigan potatoes to New York of 29c or just 100%. A continuation of this rate will have the effect of

decreasing potato acreage in the west and of increasing it in the east, thus cutting off another source of traffic.

The effect on the hay trade is similar. This crop can be grown anywhere that farming is possible. Previous to the war the eastern states obtained a large part of their hay from the Middle West. Already rail shipments of hay eastward have been curtailed.

The cotton belt has hitherto imported most of the hay it requires. The recent increase in freights has so enhanced the price of hay in the south that cotton-growers, if this high price continues, are resolving to produce their own supplies of this necessary commodity. This will deprive many roads of a large and important traffic.

The shipment of fruits and vegetables from the south and from California to eastern and northern cities is an important part of the traffic of many lines of transportation. Even under pre-war conditions large quantities of vegetables were produced under glass near these cities for the winter trade, in competition with California and the south. The present rates for transportation will enable more men to succeed in growing vegetables under glass and this will reduce the tonnage of such commodities shipped from California and the south. This tendency is in fact already noticeable.

A pound of pork represents about ten pounds of corn, and a pound of butter much more. Every increase in transportation rates tends to induce corn-growers to condense their products into meat and butter, thus reducing the tonnage of farm products delivered to the carriers.

The largest yields per acre and the greatest weight per bushel of oats are obtained in our western mountain states. Yet these states have never grown oats except as a supply crop. It is so cheap a product that it will not bear the cost of transportation to distant markets. The commercial production of oats has therefore always been concentrated about the great market centers. Every increase in cost of transportation tends to emphasize this concentration, thus reducing tonnage.

Wheat, because of its higher value per unit of weight, has hitherto been widely grown in the western mountain states. This is the only crop generally available to farmers in that section that is sufficiently high-priced to bear the necessarily

heavy transportation costs. The enormous increase in these costs in recent years may have the effect of materially reducing the acreage of wheat in these states. The land thus vacated will go to forage for dairy cows because butter is sufficiently concentrated to stand the cost of getting it to eastern and even to European markets. In so far as this change takes place, and it is in fact actually taking place, the railroads will lose the difference between the freight on the large volume of grain now shipped and the few pounds of butter than can be made from the land vacated by wheat.

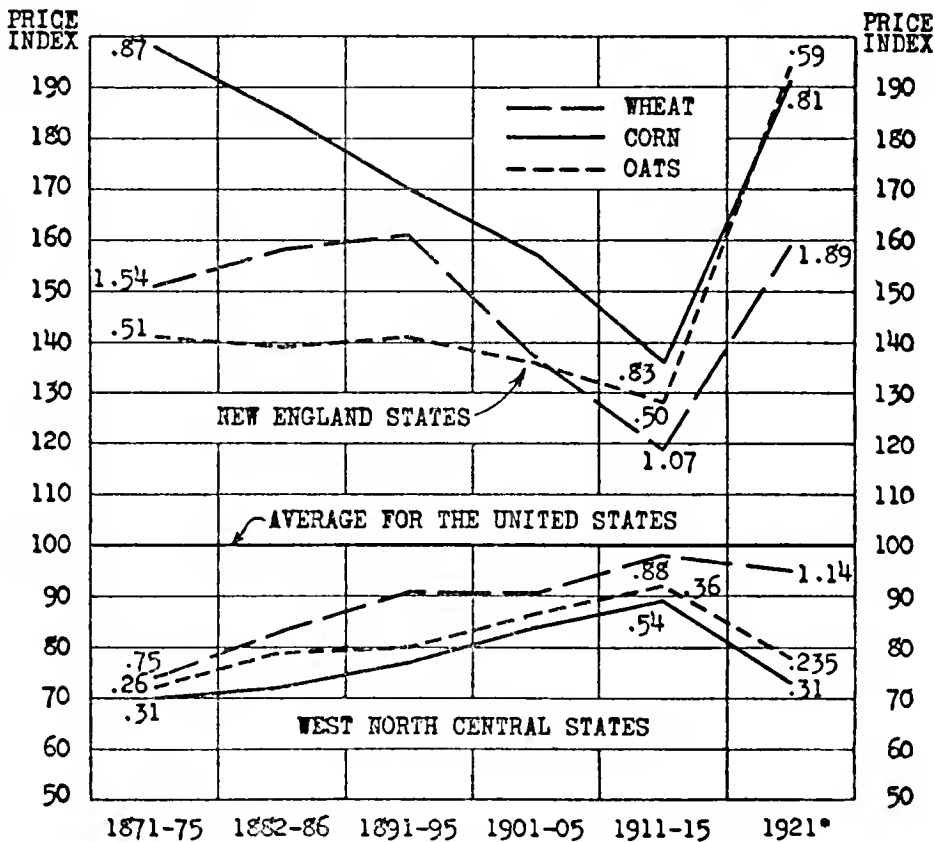
Fortunately it is not necessary for you to accept merely my opinion as to the effect of high transportation costs on agriculture. The accompanying diagram shows the difference in the farm prices of corn, wheat and oats, in the New England States on the one hand, and the West North Central States on the other, by five-year periods from 1871 to 1915, and for 1921. It will be observed that the differences in prices east and west gradually decreased until 1915. Since that time they have greatly increased and are now approximately as wide apart as they were back in the seventies. In the case of oats the difference is actually greater. It will be observed that this great spread in prices between the east and the west since 1915 is coincident with the recent increase in freight rates.

While the decrease in these differences was going on because of decrease in transportation costs, there was a rapid reduction in acreage of the cereals in New England, amounting between 1880 and 1909 to 46%. Following the Civil War the difference in prices east and west was sufficiently great to justify the New England dairyman in growing grain for feed; but as the cost of getting grain from the west fell it became more and more advantageous to the New England dairyman to buy his concentrated feed. This accounts for the reduction in the acreage of cereals. That the New England farmer, if present conditions continue, will go back to growing grain is shown by the fact that during the period of high prices prevailing in war times the acreage of wheat in New Hampshire increased from practically nothing to 1,400, and oats increased from 11,000 to 15,000 acres. The acreage of rye more than doubled. In Vermont wheat increased from 700 to 11,000 acres and oats from 71,500 to 83,100 acres. A similar increase occurred in

Massachusetts. It is true this increase occurred under high transportation rates, but the high prices of farm products at the time made these rates relatively no greater than they had

## PRICES IN PRODUCING AND CONSUMING SECTIONS COMPARED

INDEX OF FARM PRICES OF CORN, WHEAT AND OATS.  
UNITED STATES, NEW ENGLAND AND WEST NORTH CENTRAL STATES.  
5 YEAR AVERAGES OF DECEMBER FIRST PRICES.  
1871-1915 and 1921.  
100 = AVERAGE FOR UNITED STATES.  
Small figures on chart are actual prices.



been before the War. The case is different now, for the prices of farm products are lower. There appears to be no escape from the conclusion that unless there is a material reduction in cost of transportation, New England will soon be producing

again the concentrated feed she requires. The loss in profit to the railroads this will occasion is no small item to many of the roads supplying this section of the country.

To discuss in detail the effects upon agriculture and industry in general of the advances in freight rates of the past four years would require hours and days rather than minutes. In brief, if the present high rates are continued for any length of time their probable effect will be:

First, to favor the farmers of South America and Australia at the expense of our own farmers, and all the more so because of the substantial decreases in ocean rates.

Second, to keep prices of farm products in the large surplus-producing states at figures lower than are justified by the investment in land and equipment and cost of farm production, except during years of short crops.

Third, to prolong the period of dissatisfaction among farmers and encourage advocates of economic fallacies of all sorts.

Fourth, to improve the position of eastern truck- and fruit-growers, but also to add considerably to the cost of production of milk and dairy products, because of the advanced prices of hay and coarse grains necessarily shipped in from the west.

Fifth, gradually to shift industrial enterprises westward, nearer the surplus food producing territory.

Sixth, to promote sectional rather than national spirit and make more and more difficult large national policies with respect to international affairs.

No good citizen can find comfort or satisfaction in contemplating such results.

I am not making a special plea for the farmer as against the railroad. The relation between agriculture and transportation is so very intimate and dependent that neither can afford to acquiesce in a condition which seriously affects the other. They must work together in harmony and understanding. The important point I am trying to make is this: That this nation has been built up by a system of low railroad rates designed to encourage the movement of our surplus agricultural crops long distances to manufacturing, industrial and business centers, with a corresponding return haul of manufactured products, and that a sudden reversal of this theory of rate-making

results in great economic injustice and if persisted in will keep us in a state of confusion and agricultural and business uncertainty for a prolonged period. The need of permitting the railroads to charge rates sufficiently high to cover reasonable costs of operation and maintenance and yield a fair return upon the capital invested is so obvious that it must at once be conceded. Both commerce and agriculture require efficient transportation. But the folly of undertaking to establish such rates wholly without consideration of their disastrous effect upon agriculture, the greatest industry of the country, is now apparent to everyone.

The most hopeful sign at the present time is the apparent recognition of the railroad management that our present high rates cannot be continued without disaster to the railroads themselves, and that rates must come down to a point not far, if any, above the pre-war levels. Railroad management should have the whole-hearted support of all right-minded and clear-thinking people in taking the steps which will make it possible to bring about the necessary reduction.

## TRANSPORTATION ACT OF 1920

DANIEL WILLARD

President, Baltimore and Ohio Railroad Company

**T**HE framing of the Transportation Act of 1920 was preceded by one of the most exhaustive investigations ever conducted by Congress, and the Act in its present form undoubtedly reflects the enlightened effort of that body to deal with the American railroad problem in a constructive and effective manner.

It is desirable that we have a clear understanding of just what the American railroad problem really is before we attempt to decide how it should be dealt with. What we are in the habit of speaking of as the American railway system is, of course, not a system at all in the sense in which the word "system" is ordinarily used. It is not, for instance, such a system as we have in mind when we speak of the Pennsylvania or Santa Fe Systems, nor is it like the American Telephone and Telegraph Company, which latter includes under one general management or supervision a network of wires reaching all parts of the United States. When we speak of the American railway system we have in mind, I suppose, the 1,800 or more separate and independent railroad companies in the United States, owning and operating steam railroads, with a total length of about 265,000 miles, having in the aggregate about 2,500,000 freight cars, about 65,000 locomotives and about 56,000 cars used in passenger train service—all representing a total investment of approximately \$20,000,000,000 and giving direct employment to upwards of 2,000,000 persons. The American railroad problem, as it is called, grows out of the question: how can this great aggregate property, represented by an investment of \$20,000,000,000, be so developed, maintained and operated as to furnish the people with adequate transportation at reasonable rates?

The steam railroad has ceased to be a new thing and certain fundamental truths concerning the railroad problem have been so clearly demonstrated that they may now be accepted as estab-

lished. One of the fundamental truths which I have in mind is this: Whatever policy of ownership, control or operation may be adopted with reference to our American railroads, it must make satisfactory provision so that in times of emergency it will be possible to mobilize and coordinate promptly all of the physical properties of all the companies in order that the railroad plant as a whole may be used in the most effective manner possible. Such coordination we know is possible under government operation. Such coordination was attempted by the railroads themselves in 1917, and with a much greater degree of success than is generally recognized, through the agency of the Railroad War Board, which they voluntarily established in April of that year. The War Board, however, had no legal status, and as the laws were at that time, its efforts were much hampered and interfered with. A satisfactory settlement of the railroad problem demands among other things that suitable provision be made by law for the prompt mobilization and coordination of the railway properties when necessary in the public interest.

The Transportation Act of 1920, therefore, specifically provides that in times of emergency the Interstate Commerce Commission shall be authorized to assume direction and control of all the cars and engines of all the railroads in the United States, as if they were in fact owned and controlled by the government, and it authorizes the Commission to take such further steps as may be necessary to give effect to this provision of the Act. It should be borne in mind, however, that this broad authority which the Commission is authorized to assume over private property is to be exercised *only in times of emergency*. Congress undoubtedly recognized the fact that it is not possible to have complete coordination and unified operation of all the railroads and at the same time have the benefit of competition. The two things are incompatible. It was believed, and I think justifiably so, that while it was necessary in the public interest to provide for the effective mobilization of all the railroad facilities in times of emergency, it was also desirable in the public interest that except in times of emergency the individual companies should be given the fullest opportunity for individual initiative, enterprise and competition.

I believe the Transportation Act of 1920 effectively provides

for that phase of the railroad problem, and my belief is based upon the knowledge that during the fiscal year 1920, when it may be said there was a transportation emergency such as was contemplated in the words of the Act, the American railroads, acting under its provisions and in cooperation with the Interstate Commerce Commission, so coordinated their efforts that in the aggregate they moved over 447 billion ton-miles during the year. This was 7 billion ton-miles greater than the highest previous accomplishment, which was in 1918, while the roads were under Federal control. The importance of being able to mobilize promptly all of the railroad facilities in times of emergency is so great that had it not been possible to provide satisfactorily therefor in connection with private ownership and operation, it is altogether likely that Congress would have felt compelled to accept the policy of Government ownership and operation as the only possible alternative.

Congress, however, having decided that it was possible under proper legislation effectively to coordinate the railway facilities when necessary, or in times of emergency, and having made suitable provision by law for such coordination, then gave consideration to another phase of the railroad problem as related to private ownership and operation.

Of course, it is recognized that if we are to have private ownership and operation of the railroads, it can only be had upon a voluntary basis. No one, under institutions such as ours, can be forced against his will to invest his money in railroads. At the same time it is recognized that at least \$500,000,000, and probably more, must be expended each year by the railroads for new facilities in order that they may provide for the demands of our growing commerce, and unless railway securities can be made so attractive that each year at least \$500,000,000 of new capital will seek investment in that direction, then the scheme of private ownership will fail, because we cannot as a people afford to have inadequate transportation facilities. But whether railway securities are attractive or not from the investors' point of view depends, of course, upon the rate and dependability of return and the certainty of ultimate recovery of the capital invested.

Congress, with a full understanding of this phase of the problem, for the first time laid down for the guidance of the

Interstate Commerce Commission a definite rule to be followed with reference to the fixing of the rates and charges which the railways might lawfully impose. What Congress in effect did was to announce a policy, and in harmony therewith it authorized and directed its agent, the Interstate Commerce Commission, to fix rates and charges so that the railroads as a whole, or as a whole in certain regions or groups, should be able, in connection with honest and efficient management, to earn a net operating income equal as nearly as may be to a fair return upon the value of the property devoted to transportation purposes. Nothing was said in the Act about the rate of return upon the stocks and bonds of the railroads. As a matter of fact there is no mention in the law of either railroad stocks or bonds, nor is there a guarantee of any definite return as some have seemed to think, but simply the statement that the railroads as a whole should be entitled *to receive a fair return*, if honestly and efficiently managed, upon *the value of the property devoted to the public use*.

However, because the railroads are not all in one compact system, because there are in fact several hundred separate and independent companies, because some roads are more favorably located than others, and because it was recognized that different roads running between the same points should, and as a matter of fact must, charge the same rates, it was therefore recognized that rates which might be high enough to yield a fair return to some of the carriers, might not yield an adequate return to others in the same group. It was realized also that the identical rates might yield to still other carriers in the same group a higher return than could be justified from the public point of view.

It is essential in the public interest, however, that all the roads, generally speaking, should be able to survive and at the same time properly maintain and enlarge their facilities as circumstances may require. To overcome the difficulties resulting from the conditions just referred to, it is provided in the Act that if from rates fixed so as to yield a fair return upon the value of all the roads in a specific group, certain individual companies in the same group should be able to earn more than six per cent upon the value of their property, then in that case one-half of the net operating income earned above six per cent

from rates so fixed should be recoverable by the government. This feature of the Act has been much criticized, and by many has been held to be unconstitutional. Personally, I do not believe it is possible for private ownership of the railroads to endure in this country without such a provision as this in the Act. As a practical matter without such a provision in the Act, I do not believe that politically appointed agencies, in face of the opposition which might be urged, would approve rates high enough to yield a fair return upon the properties as a whole constituting a group for rate-making purposes, when it was clear that from a lower or existing basis of rates one or more companies in the same group could earn an operating income in excess of the requirements from an investment point of view. The result would be that while some of the railroads might be very prosperous and others might manage to live, still others less fortunately situated might not be able to survive as commercial enterprises, and consequently they would be unable to furnish adequate transportation to that part of the public depending upon them for service.

It was therefore thought better and more in the public interest that rates should be fixed high enough to yield a fair return upon *all* of the property used for transportation purposes in any particular group of competitive lines, even though some roads might be able to earn a sufficient return on a lower rate basis. Inasmuch, however, as the more fortunate roads would benefit by the higher rate basis necessary to sustain the less fortunate roads, Congress decided that whatever was earned above six per cent upon the property value of any particular road from rates so fixed, should be divided equally between the road and the government.

I repeat that in my opinion private ownership and operation of the railroads in this country can not endure without some such provision, nor do I think the provision which I have just referred to is in itself unfair or inequitable. Undoubtedly if it were not for the necessity of the less fortunate roads, the more fortunate ones would not be permitted to charge the higher rates. The very fact that some roads in a group are fortunate enough to be able to earn more than six per cent upon the value of their property, even though part of such excess is recoverable by the government, puts the securities of such companies in a

preferred class, and because such companies are permitted to retain one-half of all they can earn above six per cent, there would seem to be ample inducement to stimulate initiative and enterprise. Personally, I approve of this particular feature of the Act, and I venture to express the hope that its constitutionality will be upheld in the courts. Otherwise I feel that rates will not be maintained on a basis sufficiently high to sustain the roads in general, in which event private ownership and operation of the railroads as a national policy will fail. Congress, having satisfied itself that it was possible under private ownership, with suitable legislation, for the railroads to be coordinated in times of emergency, then addressed itself to the financial phase of the problem, which it undertook to solve by the establishment of a rule for rate-making, as I have shown.

There still remained to be dealt with one other important phase of the problem, to which I shall now refer. In no other country in the world do the people make so great a use of the railroads as in ours. The steam railroads in the United States perform a freight service equal to the movement of 4,000 tons one mile per annum for each man, woman and child of our entire population, while the latest figures available show that in Europe the analogous service performed by the railroads is probably less than 600 tons one mile per capita per annum.

The greater use made of the railroads by the people in this country is of course influenced largely by the fact that ours is a country of great distances and is also rich in natural and varied resources. It has come about, therefore, that in the City of New York, for example, the flour used is very likely made from wheat grown on the rich prairies of Minnesota and the Dakotas. The beef which is eaten here was perhaps bred in Texas, developed in Wyoming, fattened in Iowa and dressed in Chicago. Not only do we find upon the tables in New York and Boston salmon caught in the waters on the Pacific Coast and shipped from Seattle, but there will also be found on the tables in Seattle the cod caught in the North Atlantic waters and shipped from Boston. Many similar instances might be cited. In short, it has generally been found advantageous, because more economical, to produce our flour, meats, minerals, forest products etc. where each can be produced or obtained at

the lowest initial cost and then transport them, largely by rail, to the point of ultimate consumption, the entire transportation cost being less than the difference in initial cost of production in different parts of the country. With this in mind it is manifestly important that there should be regularity and continuity of service by the railroads, and one of the important problems before Congress was to insure if possible such continuity by guarding against interruption of service which might be caused by misunderstandings and disputes arising between the railroad managers and their employees.

It was urged by some that this provision of the Act should be so written as to prohibit strikes upon the railroads. It was not possible to enact legislation of that character, nor do I think it would have been wise to enact such legislation at that time. I believe it would be a mistake for Congress to pass a law prohibiting strikes unless we are quite certain that we shall be able to enforce such a law once it has been enacted. Personally I do not believe that we have reached a stage where we can feel confident that such a law would or could be effectively enforced. The matter was, therefore, dealt with, I think, in the wisest way possible under the circumstances. Congress created machinery and set up agencies by virtue of which the employees could feel assured of obtaining just as fair wages and working conditions without striking as they could reasonably expect to obtain even if they did strike.

The Act provides, first, that—

It shall be the duty of all carriers and their officers, employees and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or by the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the Board, which, under the provision of this title, is authorized to hear and decide such dispute.

The Act also provides for the creation of the Board above referred to and in that respect reads as follows: "There is hereby established a board to be known as the Railroad Labor Board and to be composed of nine members."

The members of the Labor Board are to be appointed by the

President. Three of his appointees shall be from men nominated by railroad employees, three shall be from men nominated by the railroad companies, and three shall be selected by the President himself, as representing in a larger way the general public, and all nine shall be confirmed by the Senate. In fact, Congress has created for this particular purpose a special Labor Court consisting of the same number as the Supreme Court of the United States, appointed in the same way, that is to say, by the President and confirmed by the Senate, and has given the Board or Court a status and dignity in keeping with its importance. The Act says that it shall be the duty of the Board to establish rates of pay and standards of working conditions which, in the opinion of the Board, shall be just and reasonable, and in determining the justness and reasonableness of such rates the Board is directed to take into consideration, among other things—

1. The scale of wages paid for similar kinds of work in other industries;
2. The relation between wages and the cost of living;
3. The hazards of the employment;
4. The training and skill required;
5. The degree of responsibility;
6. The character and regularity of the employment; and
7. Inequalities of increases in wages or of treatment, the result of previous wage orders or adjustments.

It may indeed be said that Congress by this Act has made a preferred class of the railroad workers, because so far as I know this is the first and only time that Congress has ever definitely enacted that any particular class of the people should be given at all times and under all circumstances just and reasonable wages and working conditions. Of course, Congress did not do this primarily in the interest of the workers. Congress acted only as it had a right to act in the interests of the nation as a whole. Congress acted with a full realization of the importance of an uninterrupted transportation service in a country such as ours, but being unwilling to deprive the workers of their right to strike, it sought to provide machinery which would make it unnecessary under any circumstances for the men to stop work in order to obtain just and reasonable

treatment. In short, Congress provided, or aimed to provide by law, that the railroad workers should at all times be assured of just as good wages and just as good working conditions without striking as they could reasonably expect to secure even if they did strike, for it is clear that no one could justify or expect to win a strike for wages or working conditions that would be unjust or unreasonable. This feature of the Act has been much criticised, but I venture to think that during the short time the Act has been in effect, the labor provision has more than justified itself by actual results achieved when viewed in a large way.

It may, of course, be said that each one of the three features of the Act which I have been discussing is in a sense experimental. Nevertheless, it is my feeling and firm belief that so far it cannot be said that the experiment has failed in connection with any one of the features mentioned. On the contrary it seems to me that the results so far obtained, when fairly considered, have measurably met the proper expectation of Congress.

There are other important features of the Transportation Act to which I have not referred at all, chiefly because of my limited time and because I do not consider them of fundamental importance. One of the provisions which I have in mind has reference to the future grouping of the railroads into a relatively small number of strong, competing lines. I am in favor of the general policy so announced. I do not, however, consider it of fundamental importance.

I believe that the Transportation Act of 1920 affords a workable basis for the future successful operation of the railroads in the United States, in harmony with our long-established policy of private ownership and operation. That the success of the Act has not yet been thoroughly demonstrated in all of its aspects, I admit. I believe, however, that it would be a great mistake to attempt to amend or change the Act in any of its fundamental features at the present time. I do not think we have yet had sufficient experience under the Act to justify a conclusion that a change is actually necessary or, if necessary, to indicate clearly what the change should be. I firmly believe that if the Act is permitted to remain as it is for a period of five years, and if the railway managers could be assured that

it would not be changed within that period of time, such knowledge would have a most stimulating and encouraging effect, not only upon the railway managers, but upon investors as well, and would in itself go far to assure the success of the Act. Undoubtedly the Act is not perfect in all its details. Nevertheless I believe that in its present form it makes private ownership and operation of the railroads possible, and that too on a basis much to be preferred to the only probable alternative. I urge, therefore, that the Act in its present form be given a fair and sympathetic trial.

## THE NEW BASIS OF RATE-MAKING

WALKER D. HINES

- Former Director General of Railroads

I WANT to express at the outset my cordial belief in the view that the Transportation Act deserves a fair and impartial trial. Even if we were passing through times that were entirely normal, it would still be true that an act adopted with such care and after such prolonged investigation should be given a reasonable time within which to justify its usefulness. But the truth is that we have been passing through times that are wholly abnormal, and the fact that in such times a new and comprehensive piece of legislation may not have brought satisfaction to the interests affected by it is not proof that it is not a forward and constructive step. I do not know of any place in the world where any institution or any scheme of law has brought satisfaction to the people in these war years and the years since the war. So I think we must give to this new and important piece of legislation an opportunity to justify itself when we again get into something approximating normal times.

I think it is particularly important to emphasize this necessity because it is undoubtedly true that in the period of readjustment through which we have been passing, a great part of our population, and that is the agricultural part, has suffered most intensely from the unfortunate combination of pre-war prices or less for its products, and of greatly increased freight rates based on the existing much-increased costs of railroad operations.

This has been a condition which was bound to produce discontent and it was bound to direct attention to this new legislation as the most obvious reason for the trouble, although in fact, I do not believe that the legislation can be held responsible. Under any other possible scheme of legislation, we would either have had rates approximately as high as the existing rates or we would have had a series of railroad bank-

ruptcies which would have been infinitely worse for the farmers as well as the people in other walks of life.

I want to say something about the principle of rate-making which has been put into the Transportation Act. I shall not attempt again to outline the provisions of the Act on this point because Mr. Willard has done that clearly and concisely. I want to emphasize that this new rate basis has been adopted from the standpoint of the public interest and that public interest is vitally concerned in the maintenance of this new basis. The provision in the Transportation Act that rates should be so fixed as to produce a fair return upon the aggregate value of railroad property was not put there merely to provide interest and dividends for the holders of the existing bonds and stocks of the railroad companies. It was put there for other broad public purposes, in addition to that purpose, and I wish to call attention to some of these other purposes.

One aspect of the railroad business is that it employs about two million workmen. In a normal year, I suppose there would be spent by the railroads, if they have a basis of rates that yields a fair return upon their property, from two and three-quarters to three billion dollars in wages. The distribution of that amount to the wage-earners of the country would be a tremendous factor in the prosperity of every class of people in the country. But in practice there is much more fluctuation than is generally appreciated in the amount of railroad labor and the amount of the railroad pay roll. Even if the wages remain unchanged, there may be very great fluctuations in the number of employees, in the amount of work they are called on to do, and hence in the amount of money that is distributed to them as wages. The moment the railroads begin to be apprehensive as to whether they are obtaining enough revenue fairly to protect the interests with the protection of which they are charged, they begin to lay off their maintenance forces, and maintenance represents close to forty-five per cent of the total operating expenses of the railroad companies. When the maintenance employees are laid off, the purchasing power of themselves and their families is impaired and to a considerable extent destroyed, and that has a distinctly unfavorable influence upon the general state of business in the country.

The moment this condition becomes an influence to cut down general business—and the cutting down of the maintenance program is bound to have that influence—the number of freight trains begins to diminish, the number of employees in the train service is cut down, and you have an additional element which makes for a slowing down of the prosperity of the country.

Let us look now at the material which the railroads buy. I suppose it is fair to estimate that in the course of a year under approximately normal conditions, the railroads would buy from a billion eight hundred million to two billion dollars' worth of materials, which are used in the operation of the roads. In addition to this, in normal times, they would ordinarily buy perhaps two or three hundred million dollars' worth of materials for the purposes of new construction. The railroads buy nearly one-third of the soft or bituminous coal that is produced in the country. It has been estimated that they buy about forty per cent of the steel and iron articles produced in the country and that about forty per cent of the country's lumber production goes directly and indirectly into materials used by the railroads.

When the reasonable return to the railroads begins to be seriously diminished and there comes to be a cutting-down in these purchases of materials, as there is bound to be when the maintenance program is diminished, or when the construction program is diminished, we have another and very important condition to militate against the prosperity of the country. The various industries of the country, which are dependent so largely upon the railroads, commence limiting their operations, and their employees lose their jobs and their purchasing power. The volume of business diminishes still more and again we have a falling-off in the amount of freight service and in the number of trains and enginemen employed. We begin to have a cutting-down in the amount of coal that the railroads can consume, with consequent embarrassment to the coal industry and its employees.

It follows that the giving of a fair return to enable them to proceed in a normal manner with their operations has a tremendously important relation to the public interest with respect to the labor that the railroads employ, with respect to the materials that they use, and with respect to the industries which manufacture these materials, and in all these respects the gen-

eral prosperity of the country is vitally involved. When these factors take an unfavorable turn, there is no class which is more seriously affected than the farming class, which is dependent upon the general prosperity of the country in order to have a satisfactory demand for its products.

Another point of vital interest to the public is the adequacy of the railroad service. That involves two considerations: one is that the railroads of this country are not in a condition to handle satisfactorily the amount of business which could be regarded at present as normal. They need much additional equipment and many sorts of improvements in order to meet more satisfactorily the demands of the public for an adequate service. This requires capital. In addition there is a steady growth in the volume of business done in this country. In 1900 the mount of freight traffic carried was double what it was in 1890. In 1910 it was eighty per cent more than in 1900. In 1920 it was sixty per cent more than in 1910. So that we can count upon a continuing and heavy increase in the normal amount of business. I am speaking broadly now and disregarding for the moment the fluctuations that may come in particular years of depression. With this increase in traffic there must be enormous increases in the railroad plant and they cannot be obtained without enormous expenditures of money. I think Mr. Willard estimated only five hundred million dollars a year. There will be needed, I believe, eight hundred million to a billion, which can be expended in the further improvement and extension of the railroads to the distinct advantage of adequate and efficient service, although I can readily appreciate that if the railroads cannot raise that much additional money to spend, they must, and no doubt they can, by spending less than that amount, get along with a service less satisfactory than it ought to be.

Such enormous amounts of capital cannot be raised unless there is adequate assurance of a fair return to the railroads, and there again we have an important element of public interest underlying the rate-making principle of the Transportation Act.

There is still another feature embodied in this rate-making principle of the Transportation Act, and that is, that the Transportation Act was designed to establish a greater certainty as to a fair return for the railroads.

Prior to the Transportation Act, the attitude of the Government was restrictive rather than constructive. It merely told the railroads what they should not do, but assumed no obligation to aid in creating a rate basis which would affirmatively assure them a fair return. That contributed to a condition of uncertainty which was unfavorable to the public interest. The Transportation Act for the first time has imposed an affirmative, express duty on the Interstate Commerce Commission to establish a rate basis which, as far as may be, will yield a fair return. This provision was designed to establish a greater certainty, and I think that is one of the most important elements of public interest that is involved in this new conception.

I believe as the railroads become better assured of their status there can and will be developed on their part a more confident and steady policy of carrying forward on a more regular and normal basis their maintenance and construction programs. The lack of public interest in maintaining a fair return was always working to make the return uncertain. There was consequently a disposition on the part of the railroads to respond very quickly to any unfavorable aspect of general business by promptly cutting down their maintenance and construction programs. That has tremendously accentuated the tendencies already working toward depression in general business conditions, so in the past we have had a condition where this great institution, which represents the greatest organized purchasing power and the greatest organized source of wages in the country, has been under an influence which caused it, the moment there came to be signs of depression, to convert itself into an agency for increasing that depression. And that picture has another side. When business begins to get better, prices begin to go up and labor begins to get scarce, the railroads, having been forced to cut down their maintenance and construction programs in times of depression, then have to redouble their efforts in these directions and thereby they become an influence for creating instability by putting up the price, by bidding against each other and the other interests in the country, in order to make up for their deferred programs in times of depression. Further than this, the result of such a policy has been that in a time of returning general business prosperity the railroads have had to use their tracks, equip-

ment and other facilities very largely for handling their own material and supplies, which on account of their retrenchment policy during the preceding period of depression they had not purchased and distributed while they had ample surplus equipment and other facilities. This has led to congestion of business and has tended to accentuate still further the high prices characteristic of returning prosperity. I strongly believe this new policy of the Transportation Act is calculated in large part to correct these highly unfavorable influences and to enable the railroads, as they begin to feel better assured of the continuance of this new policy, to adopt a more regular policy of maintaining more uniformly in bad times their normal programs of maintenance and construction and thereby help stabilize the conditions of the whole country, rather than be forced into a condition of intensifying unfavorable influences in the direction either of further depression or of undue expansion. I think this result will be one of the most important and salutary effects of the law, and will constitute one of the most striking ways in which this new basis will be in promotion of the public interests.

I fully appreciate that the adoption of a policy of carrying forward normal programs of maintenance and construction in times of business depression involves some difficult complications in the matter of cash, because the railroad maintenance and construction work is largely a cash proposition. All employees engaged in such work must be paid in cash and all materials used in it must be bought for cash or on very short time. Naturally in time of business depression railroad companies cannot generally raise on satisfactory terms large amounts of capital by the issue of stock or of long-term bonds, and they have been quite hesitant to borrow money on short-term paper for carrying forward maintenance and construction work. Nevertheless with increased assurance of a definite and helpful governmental policy I believe the railroad companies could and ought to make further efforts than they have felt justified in making in the past to provide themselves with the necessary cash to carry forward their maintenance and construction work in times of depression when labor is more plentiful and materials are cheaper, and when they have ample equipment and other facilities for handling the work with a minimum of inter-

ference to their transportation of commercial traffic. Not only will this be to their own direct benefit, but it will immensely promote the general public interest, and hence this consideration in itself constitutes a highly important justification for the rate-making principle of the Transportation Act.

In the last analysis railroad rates will depend upon the cost at which railroad transportation can be carried on. This new rate basis rests on the assumption that this cost is a matter of vital importance. It assumes that the railroads must be economically and efficiently managed. This subject is to be increasingly a matter of scrutiny and concern on the part of the Interstate Commerce Commission. With such scrutiny, and with the efforts on the part of the railroad managements, and with the improvement of conditions generally, I think it is fair to predict that there will be such reduction in the unit cost of railroad operation that to a large extent the difficulties from which the public has suffered—and no interest has suffered more than the farmers—on account of rates out of proportion to the cost of the products transported, will be overcome. So believing as I do that this is an important forward step, and being utterly unable to think of any substitute for it which will begin to offer as great promise of adequate service, adequate employment of railroad labor, adequate consumption of materials produced in the country, or as great promise of a definite forward movement in the stabilizing of business of all sorts throughout the country, I certainly wish to add my voice in favor of giving the Transportation Act a thorough and sympathetic trial, and I predict, with great confidence, that it will justify itself when it gets normal times in which to work.

## HOW RAILROADS ADAPT THEMSELVES TO NATIONAL CONDITIONS

ALBERT SHAW

Editor, *The Review of Reviews*

**T**RANSPORTATION is in itself a specialized form of business which has problems of its own. In its aspect as a distinct interest, the transportation system—of which the railroads constitute the larger framework—is subject constantly to inquiry and discussion from many standpoints. But the railroads thus regarded do not constitute the subject of our meeting of the Academy today. It is the economic situation of the United States, as inseparably affected by transportation methods and policies, that is before us for our consideration.

It is true that from the standpoint of investment and from that of organization and employment the railroads, with their related industries of service and supply, constitute a foremost economic interest. But railroads are also, as an everyday affair, looked upon by men engaged in every other form of production and exchange as a subordinate but essential factor in their own operations. The producers of wheat and corn, as well as the producers of coal and steel, think of railroads not as a distinct field of investment and of employment but as an agency necessary to their own success. Every business measures its own prosperity in terms of market and price. Transportation is in many industries the vital factor in measuring the range of markets. Freight rates go far to determine the habits of whole communities as regards the things that they eat, the houses that they build, the fuel that they consume, and the particular forms of employment that they find profitable.

Considerable changes in transportation rates, when such changes come suddenly, are likely to disturb complicated movements to such an extent as to create emergencies in some lines of business and to produce sharp and painful crises in others. At such times, the demand for remedies often creates confusion of thought, so that slow and far-reaching policies are suggested

as cures for transient evils. It happened, as has already been explained by a distinguished speaker, that a greatly delayed advance in freight rates to meet the needs of the railroads took effect at the very time when agricultural prices were rapidly falling by reason of the curtailment of European markets. To advocate a ship canal to connect our Great Lake system with Europe by way of the St. Lawrence, as a remedy for this particular crisis, would be something like proposing the invention and adoption of new methods of fire prevention at the moment of an actual conflagration.

If one is considering the relation of railroads to business prosperity in the more permanent sense, it becomes important to remember that the railroad systems of the past and of the present are merely a concrete expression of the phases of our economic development as we have spread across the country from Atlantic to Pacific. The early railroads followed the lines of pioneering progress, while the later railroads pushed ahead in order to aid more rapidly in the settling of the great West. Nearly all of the problems affecting American railroads are best understood by studying them in close relation to the facts of our economic history, as we have taken vast expanses of new country, opening up agricultural and mineral resources, and creating communities occupied by many millions of settlers.

The transportation methods and conditions of the future are also, like those of the past, to be vitally related to changing conditions in the nation's development as a whole. There will always be long-haul business for the railroads in ample volume; but there will be a relatively increasing intensity of short-haul traffic movement if the country is to continue to expand in a normal and healthy way. Vast surpluses of agricultural production in the Mississippi Valley and the farther West, in the nature of things, are a temporary phase. Obviously the agricultural development of these regions was destined to come first. But the growth of towns and cities, and the transplantation of varied industries, were sure to follow.

To an increasing extent the bread-stuffs, the beef and pork and the fruits of the central and western States will be consumed by populations within their own boundaries. Europe is not destined to live upon the wheat of the United States, nor even upon that of Canada. It is far more important for the

interior of the country to develop its own transportation systems and expand its own varied economic life than to advocate large expenditures which would look to future markets beyond the Atlantic.

The group system as proposed in the new Transportation Act would seem to be in accord with the normal tendencies of the country. We shall continue to have a very large traffic that is national in its scope. New England will make articles that will be sold in every State. The citrous fruits of Florida and California will find consumers everywhere. Natural centers for the production of iron and steel, like Pittsburgh or Birmingham, will hold preeminence and will find markets beyond their own districts. But the tendency will be towards intensive regional development. The agriculture of the East, which has been abnormally depressed and neglected, will be revived under conditions of a more normal and permanent character. Not more than twenty-five per cent of the fruit-growing capacity of the Eastern States is now utilized.

Obviously it is highly important that there should be immediate study of freight rates with a view to adjustments for the lightening of specific burdens. But our recent experiences, which have brought distress to wide regions and heavy loss to particular industries, will have been attended by some indirect advantages. Localities will see the greater relative value of home markets, and will endeavor to import industries rather than to export commodities.

It was natural enough that in the earlier period the emphasis should have been placed upon the long-haul. The story of the transcontinental lines, of the eastern trunk lines, of the granger lines, all has to do with the eastward movement of surplus agricultural products and the westward movement of various commodities and supplies. A marked trend toward equalization of average conditions, as our Western States became mature, was gradually producing changes of a normal and healthy sort when the great European war reversed all tendencies and created a market condition unknown before in the history of the world. Along with the movement of men and war material to the eastern seaboard, there arose an unprecedented European demand for food and commodities of all kinds. Price-fixing by Government, and prompt payments

through the United States Treasury, made European markets seem the most desirable of all things to Western producers. It has not been easy to accept the fact that this war-time phase was wholly abnormal, that it will never return, and that prosperity must be found at home or nowhere.

One of the greatest benefits that could come to our transportation interests themselves would lie in the purchase of railway securities by Western and Southern investors, in order that the definite and conscious control of their own major agencies of travel and traffic movement might become localized. Our program this afternoon is designed to bring the question of freight rates and their relation to general prosperity before us from the standpoint of several practical and theoretical students of these subjects, who are recognized as authorities in their respective fields.

# THE TRANSPORTATION COST IN A BASIC INDUSTRY—STEEL PRODUCTS

CHARLES R. HOOK

Vice-President and General Manager, American Rolling Mill  
Company, Middletown, O.

**I**N talking on the subject "Transportation Costs in Steel Products", I do not presume to speak for the Steel Industry. However, the figures which I shall present, although applicable to plants making high-finished sheet steel, are, I believe, indicative of what is true with respect to all other steel products.

In arriving at the quantity of iron ore, coke and limestone used in the production of one ton of pig iron we have used as a basis the amounts shown by the Southern Ohio pig-iron manufacturers in the ore case before the Interstate Commerce Commission.

To make one ton of pig iron, the following quantities of raw material are required:

Iron ore .....	2 gross tons
Coke .....	1.10 net tons
Limestone .....	.50 net tons

The quantity of pig iron used in the production of one net ton of finished sheets is taken from our own detailed cost sheets.

If you will refer to the chart you will observe that we have presented figures showing the accumulated freight in the five principal raw materials in a net ton of finished steel sheets delivered at St. Louis. The city of St. Louis is used only because it is a natural market for a plant in our locality.

This freight today is \$24.07, in 1914 it was \$11.84, showing an increase of \$12.23 today over the period at the beginning of the World War.

If we deduct the freight from Middletown to St. Louis, which is \$6.80, we have \$17.271 as the amount of accumulated freight in these items at Middletown.

Sheets which are being delivered on orders taken prior to



A number of elements in the cost of producing steel show little if any recession from war-time figures, notably that of railroad transportation, which on basis of existing rate conditions averages in the case of the subsidiary companies upwards of forty per cent of the total cost of producing steel.

If we were to add to the figures we have shown on the chart the freight on all the other materials and supplies used to produce a ton of sheet steel, you can readily see that the statement just quoted is certainly conservative as to the facts.

In announcing new and lower prices for steel products, going into effect on July 5, 1921, President Grace, of Bethlehem Steel, said:

The increase in freight rates has been the largest factor in increasing the cost of manufacturing steel products because the making of a ton of finished steel involves the transportation of more than five tons of raw materials. The cost factors next in importance are materials and labor.

Taking as an example the price for structural shapes, under the new schedule of prices, 2 cents a pound or \$44.80 a gross ton, the comparison with pre-war prices, reflecting concretely the three more important cost factors, is as follows:

The increase over pre-war cost in transportation on ore, coal, limestone, scrap and miscellaneous supplies amounts to \$7.85 per ton of finished steel.

The accumulated freight in sheet bars would I believe compare very favorably with the freight in structural shapes, yet sheet bars represent only the beginning of operations in the production of finished sheets, so by a little use of the imagination you can readily see what the total transportation cost in a ton of sheet steel would be, if all the materials used in all the operations were included in our figures.

It may interest you to know for instance, that in 1920 we used:

5555 Net tons spelter  
11335 Net tons sulphuric acid  
26173 Net tons fire brick of all kinds.

As an illustration of the conditions existing in 1914 as compared with today I should like to present the facts with reference to our coal supply.

In 1914 the average price of all the coal we bought was 93c per ton at the mine; the freight was \$1.15, making a total cost of \$2.08 per ton f. o. b. Middletown.

The freight alone today is \$2.24, or 16c more than the freight plus the cost of the coal in 1914.

It is our opinion that transportation costs must be liquidated to somewhere near the same percentage above the base of 1914 as is true with respect to steel prices. To secure liquidation of transportation charges, comparable with that which has already taken place in the steel industry, will require a reduction of approximately  $28\frac{1}{2}\%$  in present rates.

I think I am safe in saying that the steel industry as a whole wants not higher prices but lower costs in order that its surplus production can be sold in the markets of the world in competition with our fellow-manufacturers across the water.

I am not unmindful of the part railroad wages are playing in the cost of transportation and I submit to you that it is not reasonable to ask the steel worker, who is receiving a wage fifty per cent above base, to buy transportation cost in everything he wears and eats when that cost is so largely affected by railroad wages one hundred per cent above base.

Until the restoration of approximately the same relationship which existed between transportation, fuel, the various basic commodities and wages during the pre-war period is effected, a normal exchange of commodities cannot take place and any attempt to maintain one of the factors of cost at a high level in the face of radical declines in the other factors, is contrary to economic law and its depressing effect is cumulative.

## HOW THE RAILROADS MAY RENDER MAXIMUM SERVICE

WILLIAM J. CUNNINGHAM

Professor of Transportation, Harvard University

**I**N this attempt to suggest a partial answer to the question assigned to me for discussion, I have adopted the viewpoint of the near future, assuming that the much-desired business revival is not far distant. Under present conditions of subnormal traffic there is no serious question concerning the ability of the railroads to meet the immediate transportation needs, although the standard of service as a whole is lower than that which should obtain in normal times and the scale of freight rates, dislocated as it is by two substantial war-time horizontal increases, is inequitable in many respects and demands early revision. We are, however, not so much concerned with the immediate present as with the near future when the transportation demands will be much greater and when the capacity of the railroads will perhaps be overtaxed.

It is hardly necessary here to dwell upon the fact that railroad development has been virtually at a standstill since the beginning of the World War. The normal rate of enlargement and improvement in facilities and equipment had been seriously retarded prior to the war when the steady decline in the rate of return on investment prevented the usual income appropriations for betterments and increased the difficulties connected with raising new capital on reasonable terms. It will be recalled that the peak-load of receiverships came in 1915 when about one-sixth of the entire railroad mileage of the country was in the hands of the courts. The additional operating revenues from the large volume of war traffic in 1916 averted the threatened general financial collapse, and the government rentals and guarantees from January 1, 1918, to September 1, 1920, enabled the railroad companies to maintain solvency. Yet, while general bankruptcy was avoided, the program of extension, enlargement and improvement was necessarily limited to emergency needs, and when

the railroads were again entirely on their own resources from September 1, 1920, the arrearage in deferred but necessary investments in betterments was substantial. Little could be done during the last half of 1920, when the volume of traffic exceeded all previous records, and such plans as were then made for execution in 1921 were necessarily abandoned in greater part in 1921 because of the acute business depression and the serious losses in revenues. Notwithstanding the substantial rate increases of 1920 the net railway operating income of 1921 was but little more than one-half of the statutory rate of six per cent contemplated by the Transportation Act as a reasonable return on property value.

Various estimates have been made as to the sum necessary to make up the deferred improvements. It is probably close to the mark to set the amount at \$1,000,000,000 per year for five or six years. To this should be added a large sum for deferred maintenance chargeable entirely to operating expenses. This need for large capital expenditures was referred to by Mr. Willard this noon who stated that it would be approximately half a billion dollars a year. Mr. Hines thought it might be as much as one billion. It may be recalled that ten or twelve years ago, the late James J. Hill stated that the railroads needed a billion dollars a year for five years for terminal enlargements. My own view is that the larger figure is that which is justifiable, and that the railroads will need during the next four or five years to spend one billion dollars per year for additions and betterments. One billion dollars a year, related to twenty billion dollars property investment, is an increase of only five per cent a year, so that while the sum itself sounds large, it is not so large relatively.

Considering the fact that the normal growth in ton-miles over a long series of years has been an increase of one hundred per cent every twelve years, and that passenger miles normally double in approximately fifteen years, it is plainly evident that a consistent and continuous program for increasing traffic capacity is imperative. Having in mind also the further fact that relatively little has been done to increase traffic capacity during the past decade, the seriousness of the situation is obvious. It is probably true that the traffic of the fall of 1920 was the greatest load that the existing facilities could stand. Since

then there have been practically no increases in capacity. Indeed the situation with respect to maintenance, particularly as to freight and passenger car equipment, may be less favorable.

If these premises are correct, and I believe that they are, the railroads will have difficulty in rendering satisfactory service when the business revival brings with it a volume of traffic as great or greater than that of two years ago. There is imperative need, therefore, for the expenditure of large sums for additions and betterments. The railroads cannot furnish the maximum of service without such expenditures. The problem then is largely one of finance.

With the passage of the Transportation Act and its constructive rule of rate-making, as well as its recognition of the principle that carriers are entitled to a fair rate of return on property value, and with the rate increase authorized in 1920 by the Interstate Commerce Commission for the purpose of producing a net return of six per cent, it was hoped that substantial progress had been made toward the solution of the financial problem. All calculations, however, were upset by the business depression. Yet it is not proper to interpret the disappointing results of 1921 as an indication that the Transportation Act has failed. Its real test must await a return to normal business conditions. My own opinion is that its inherent soundness will then be demonstrated.

I shall digress, if I may, to show how the law of diminishing returns can easily explain why the railroads under the high freight rates of 1920 were able to earn only one-half of the rate of return contemplated by the Transportation Act. It will be recalled that the increases authorized by the Interstate Commerce Commission were based largely upon estimates made by the railroads, checked and accepted by the Commission. In arriving at those estimates, the amount of the increase was determined by going to the bottom of the income account, and working upward, that is, determining what six per cent on the property value would require, estimating taxes and other items, estimating operating expenses, seeing what the gross operating revenues should be, then finding out how much freight and passenger rates should be increased to bring that gross revenue.

The Interstate Commerce Commission then attempted to set rates so as to bring that estimated amount of operating revenue

which would yield the six per cent contemplated by the Act. It so happened, however, that the volume of traffic upon which the calculation was based was overestimated and some of the expenses were underestimated.

Let us assume that that gross revenue is one hundred and that the operating expenses are seventy, leaving the net operating revenue as thirty. Taxes and charges might be assumed as five and fifteen, respectively, leaving twenty of taxes and charges to come out of the thirty net operating revenue. That would leave ten as a surplus for the payment of dividends or appropriations.

Instead of getting one hundred units of revenue, the railroads got less than eighty. For easy figuring, let us assume that they got eighty. That would be a twenty-per-cent decrease. Expenses could not be reduced twenty per cent with the loss of traffic, because, roughly speaking, only one-half of the expenses will fluctuate with fluctuations in traffic in that degree. If we take that as a basis, one-half of the twenty, or ten per cent, would affect the expenses, bringing the expenses from seventy to sixty-three. The sixty-three expenses, then, would be taken from eighty operating revenues, leaving seventeen net, instead of thirty. From that seventeen, it would be necessary to deduct twenty for taxes and charges, leaving a deficit of three units instead of a surplus of ten. That is a very simple arithmetical demonstration of the profound effect of a loss in traffic because expenses cannot be trimmed to meet the loss in revenue to the same degree in which that loss in revenue occurred, and besides, taxes and other expenses are constant.

That will explain, in greater part, the disappointing results of 1921. It is not an indication of failure of the Transportation Act. It is merely the working of economic laws.

In the meantime how are the railroads to render maximum service? It seems to me that the answer is:

- (1) By improvement in management;
- (2) By better relations with labor; and
- (3) By patience and tolerance on the part of the public.

Without intelligent management, loyal service from employees, and the support of public confidence, satisfactory and economical service is impossible. In whatever degree an im-

provement is brought about in any one or in all of the three fields, in that degree will progress be made toward the attainment of the objective named in the subject of this paper.

Public regulation of railroads may have been carried to extremes and in certain particulars such regulation has worked against the best interests of both the public and the railroad owners, yet such criticism as may fairly be directed against regulation applies to policies followed prior to 1920. The Transportation Act of that year marked a new era in which the regulating authorities are charged with new responsibility for the powers which they may wield. Prior to 1920 the spirit of regulation was mainly corrective and punitive. The new law, while continuing the powers of correction and punishment, also recognizes the fact that the prosperity of railroads is essential to satisfactory public service and it directs the regulating bodies to exercise their authority so that consideration shall be given, among other things, to the transportation needs of the country and the necessity of enlarging transportation facilities "in order to provide the people of the United States with adequate transportation."

In return for this public recognition of responsibility and partnership in adequate net earning power, railroad managers should whole-heartedly accept all of the obligations which the Act imposes upon them. In the first place there is the obligation to operate the properties honestly, efficiently and economically. In the second place there is the obligation to recognize the fact that the principle of railroad consolidation is a vital part of the new rate-making rule. A selfish attitude on the part of individual roads in opposing progress toward the elimination of the troublesome factor of the weak road, should not be allowed to wreck the most important feature of the new law. I am sorry here to disagree somewhat with Mr. Willard, who, while believing in the principle of consolidation, regards it as not vitally important. It seems to me that it is a vital part of the successful working of the rate-making rule, inasmuch as it is only by consolidation that the so-called weak roads can be strengthened, by being absorbed by the stronger roads. In the third place, there should be a more receptive attitude toward really constructive measures which look toward unification of facilities and pooling of freight equipment. All

such proposals have their defects, some of them serious, but when a plan such as that of common ownership and control of freight cars is so obviously advantageous in principle, an effort should be made to make it workable rather than to block progress by condemning the whole because of a defect in a part.

The railroads as a whole quite properly protest against the efforts of those who support the Capper Bill which would eliminate the rate-making provision of the Transportation Act, yet a few of the railroads will just as surely destroy the effectiveness of the law by attacking the principle of recapture of excess earnings, or by appealing to the courts to overthrow the decision of the Interstate Commerce Commission in a recent important case affecting the division of revenues on joint traffic. The best interests of the railroads as well as those of the public will be served by a whole-hearted acceptance of every part of the Transportation Act to the end that it may have a fair trial under normal conditions.

Finally, the railroads as a whole should agree upon and make effective a fair and enlightened policy toward labor, recognizing the joint partnership in an ungrudging spirit and without antagonism against unions as such. The Transportation Act provides the necessary machinery for the restoration of amicable relations. The responsibility for the failure to get together on important principles cannot be charged entirely to management but it must assume a share. The fear on the part of the unions that some railroads are attempting to use the present opportunity to disrupt their organizations has a very disturbing influence. Economical operation and maximum transportation capacity are impossible while labor relations are strained beyond the legitimate and natural degree of difference in the respective viewpoints of employer and employed.

But the remedy is not wholly in the hands of management. The public has a right to demand that employees shall recognize the relation between loyal and efficient service and economical and satisfactory transportation. Misled by their leaders, an increasingly large proportion of employees believe that railroad management as a whole is corrupt, and their resistance to the inevitable deflation in war-time wage rates and restrictive rules is carried to an extreme which, while aimed

at management, disregards public interests in the restoration of normal conditions. Just as railroad managers as a whole must recognize their obligations as the operating heads of public utilities, so must the labor leaders and the union membership be brought to a realization of the fact that they too are amenable to the bar of public opinion. The obligation of the railroad managers to pay fair wages is no greater than that of the employees to work efficiently.

Finally we come to the obligations of the general public. When Congress, in 1919, considered the many plans for the solution of the railroad problem, it responded to an overwhelming public sentiment by rejecting all proposals looking toward government ownership or operation in any form. Public opinion was unmistakably in favor of a return to the initiative and competition of private ownership and management. The passage of the Transportation Act appeared to wipe the slate clean of public resentment and antagonism because of past abuses and mismanagement, and the railroads were returned to their owners with an encouraging degree of public confidence.

Principally because of the disturbing effects of the business depression and the burden of war-inflated freight rates, a large part of the public confidence in railroads has changed into an attitude of criticism and distrust. Much of the criticism is the result of misunderstanding. It is commonly believed that the railroads are working under a guarantee from the government and that they are not accepting their fair share of the pains of post-war deflation. The effect of freight rates upon the cost of living and upon the marketing of commodities has been unfairly magnified, and the atmosphere is befogged by professional propagandists with a mixture of sophistry, half-truth and misstatement.

If we are to find a way out of the dilemma short of government ownership it can only be by the exercise of patience and tolerance on the part of the public. They must give the railroads time to adjust their costs to changed conditions and to put their house in order for the hoped-for better times and bigger traffic. The public must exercise moderation and temperance in their demands for rate reductions. Just now each group of shippers is insisting that the rates in which it is interested must come down at once without regard to the effect

upon railroad net income and service. Notwithstanding the fact that the present rate scale is yielding only slightly more than three per cent on property value, certain interests are intent upon cutting the heart out of the Transportation Act by repealing its rate-making clause, and upsetting the equilibrium by curtailing the power of the Interstate Commerce Commission over state rates.

Unless the public will refrain from encouraging Congress to tinker with the existing laws, and from bringing political pressure to bear upon the Interstate Commerce Commission to make wholesale downward rate adjustments while the railroads are barely able to pay taxes and charges, there can be little progress made in putting the transportation machine in order for the heavy traffic load which will probably soon be in sight.

Patience and tolerance, and a reasonable degree of confidence in the integrity of railroad management, will serve the real and long-time interests of the public much better than impatience, intolerance and distrust. Adequate service and a factor of safety in traffic-carrying capacity are more important than low rates. An insistence upon rates which are unremunerative will work against the rehabilitation of the railroad properties, prevent the making-up of deferred maintenance and effectually block the flow of income and new capital into imperatively needed and long-delayed improvements and enlargements.

## WHAT RAILROADS ARE DOING TO INCREASE ECONOMY AND EFFICIENCY OF OPERATION

R. H. AISHTON

President, American Railway Association, Chicago; Former Regional  
Director, Northwestern Region, U. S. Railroad Administration

**I** HAVE been assigned twenty minutes in which to deal with a rather large subject. How large it is, I doubt whether many people realize. For example, in the year 1921 the Class 1 railroads performed the following service.

<i>They moved</i>	306 $\frac{7}{8}$ billion tons revenue freight one mile
	37 $\frac{1}{3}$ billion passengers one mile
<i>To do this</i>	
They created	1 $\frac{1}{8}$ billion train miles
They earned	5 $\frac{1}{2}$ billion dollars
They paid operating expense	4 $\frac{1}{2}$ billion dollars
There was paid in wages	2 $\frac{8}{10}$ billion dollars, the decrease over previous year being due to depressed business, deferred maintenance and consequent large reduction in number of employees.

That is all I shall say regarding billions or millions. It is hard for me to comprehend what a million is, to say nothing of a billion. Let us get down to something we can all understand without undue mental strain. I have been allotted twenty minutes. I started talking at 5:00, I will finish and sit down at 5:20, and during that twenty minutes this will have happened on the railroads. During the twenty minutes that I am talking the energy developed by the railroads is equivalent to moving a train consisting of a locomotive with ten freight cars carrying 311 tons of revenue-paying freight, with two more freight cars containing 38 tons of Company freight that doesn't produce revenue, with two passenger cars containing 38 paying passengers together with the employees necessary to operate the train, with the necessary postal, baggage and express car, and a little old red caboose, a total of 17 cars, a distance of 37,500 miles, or once and one-half times around the earth at its greatest circumference. What do they get for performing this service? The year 1914 is taken for comparison because

it was a year of depression and because it marked the start of the European war, the beginning of all our troubles:

In 1914 every 20 minutes the gross earnings were .....	\$115,347
In 1921 every 20 minutes the gross earnings were .....	209,874
<i>Increase—82%</i>	
In 1914 every 20 minutes the operating expenses were...	\$83,844
In 1921 every 20 minutes the operating expenses were...	173,652
<i>Increase—107%</i>	
In 1914 the pay roll for 20 minutes .....	\$50,888
In 1921 the pay roll for 20 minutes .....	106,379
<i>Increase—107%</i>	

The above figures indicate what the matter is. In addition, the following facts should be considered.

In 1914 every 20 minutes there was paid in taxes .....	\$5,159
In 1921 every 20 minutes there was paid in taxes .....	10,526
<i>Increase—104%</i>	
In 1914 every 20 minutes the net Railway operating income, which is the amount left after payment of expenses and taxes, was .....	\$25,153
In 1920 it practically disappeared, being only .....	822
In 1921, however, with an increase of 3,091 millions in investment over 1914, the net operating income every 20 minutes was .....	22,755
In other words, whereas the book value increased 18% between 1914 and 1921, the net railway operating income earned on the investment thus increased actually decreased $9\frac{1}{16}\%$ .	

What are the Railroads doing to bring about economy and efficiency?

In 1921, although the times were depressed, as was the case in 1914:—

They handled 7.7% more revenue ton-miles than they did in 1914.

They handled 8.0% more passenger-miles.

They did it, however, with 10.6% less train-miles, and the train-mile is what creates expense. There must have been economy and efficiency manifested there, surely.

In 1920, with a large business, as compared with 1914, with a light business:—

There was an increase of 44% in revenue freight-ton-miles, and about 36% in revenue passenger-miles, and yet this was accomplished with the same train-miles, practically, as in 1914.

As a matter of fact, it was 300 miles less every twenty minutes than in the 1914 period. Truly a notable record.

There isn't a railroad but what has been and is making the strongest individual efforts, through its own organization of experts, to develop new methods of efficiency and economy. I doubt if there is any industry in the country that has any more complete check on the minutest details of its operations, or that has competitive initiative developed to a higher degree, than the transportation companies.

The field for economy in the future lies largely, in my opinion, in two main directions:

- (1) Heavier car loading.  
One ton more per car load is equivalent to adding 80,000 cars to the supply.
- (2) More mileage per car per day.  
One mile additional is equivalent to adding 100,000 cars to the supply.

These two things the railroads and shippers are vitally interested in and they are working cooperatively towards the ultimate goal. Besides this there are, of course, the large intensive developments requiring large capital expenditures that will produce economies. When the time arrives when such expenditures can with safety be made with a hope of reasonable return, as great progress will be possible in the future as has taken place in the past.

The time limit has now expired. It is 5:20. Our train has completed its twenty-minute journey once and one-half times around the world; but while this talk stops the train must still keep going day and night through storm and sunshine, through business depression and great activity, without a hitch but with constantly increasing speed and cargo, if this nation of ours is to continue to expand.

## THE TRANSPORTATION FACTOR IN THE PRICE OF COAL

J. D. A. MORROW

Vice-President, National Coal Association, Washington, D. C.

**S**PEAKING as I do as Vice-President of the National Coal Association, which is an organization of bituminous coal producers, what I have to say on the subject of the transportation factor in the price of coal refers particularly to bituminous coal and not to anthracite.

When the ordinary consumer pays his coal bill he thinks he has paid for coal. As a matter of fact what he has chiefly bought and paid for is transportation service from the coal seam to his furnace room. The discussion of this factor in the cost of coal usually centers about railroad transportation, but in order that you may appreciate more fully the part which the railroad plays in the whole problem of transportation of coal, I want to speak very briefly about some of the transportation problems involved in volume production of coal.

Transportation of bituminous coal from the mine to the consumer begins at the face of the coal seam underground, often two or three or four miles from the tippie where the product is dumped into railway cars. Various methods are used in that underground transportation, ranging all the way from primitive haulage by mule or horse in very small mines to splendid motor haulage over miniature electric railway systems in the larger modern mines. If the mine is a drift mine, that is if it goes directly into the hillside, the trains or "trips" of mine wagons are hauled out and dumped directly into railway cars. If it is a shaft mine, the wagons are brought to the foot of the shaft, uncoupled, lifted to the surface, and then dumped into railroad cars. Sometimes the mine wagons are dumped at the shaft bottom into skips which bring the coal to the surface.

The cost of transporting coal underground upon the mine haulage varies, of course, with many different local conditions, such as the type of haulage used, the grades in the mines, the

length of haul, the extent to which falls of the roof have to be cleaned up, the extent to which bottom conditions necessitate repairs to track and increase the track maintenance cost, and similar factors. The range of mine haulage cost is generally between 20 cents and 35 cents per ton, on the basis of present wage scales, out of a total average production cost for 1921 of \$2.94 per net ton. There are extremes, of course, above and below those figures, but they represent the general range of transportation costs at the mine at present. Approximately 80% of this haulage cost is direct labor cost in the operation of the mine transportation system. The other 20% is made up of cost of supplies, repair parts and power, and of depreciation on the haulage system.

It must be remembered that these railway systems are equipped with expensive electric or storage batteries, or with compressed air locomotives, and that many of the mines have a large number of cars underground. They are equipped with heavy steel rails. The operators have the problem of maintenance of track under the adverse conditions common to coal mines, with constant falls of slate and rock from the roof, with other difficulties with roof and bottom, with a certain amount of corrosion from mine water and so on. The maintenance of way underground is much more difficult than the maintenance of a railway system on top of the ground. All of these factors enter into that cost of underground transportation. Moreover, the mine transportation system is not used twenty-four hours in the day, as is an outdoor railroad system.

The second element in the transportation cost of bituminous coal is the railway freight rate. Railway freight rates on bituminous coal at present are approximately 93% higher than in 1913. They range from 90 cents per ton on short hauls to \$7.25 per ton on such movements as that from the mines of Utah and Colorado to the Pacific Coast. According to George M. Shriver, Vice-President of the Baltimore & Ohio Railroad, the present average railroad transportation charge on all revenue bituminous coal is \$2.27 per ton. Not all of the output of bituminous coal bears this transportation charge. Of the total normal production approximately 11% is used at the mines and 89% is shipped away. This 11% is made up as follows: About 3.7% is sold locally to consumers in the vicinity

of the mines; 2% is consumed by the mines themselves for power and fuel purposes; and 5.3% is made into coke at the mines. The 89% which is shipped away from the mines moves as follows: 2% by water, chiefly on the Monongahela, Kanawha, Ohio and Mississippi Rivers; and 87% by rail. One-fifth of this 87% is non-revenue railroad fuel coal. This coal is used on the lines of the originating carriers and while it bears a transportation cost, no charge is made by the carrier for the movement of its own fuel supply. This leaves approximately 69.5% of the normal output of bituminous coal as revenue freight, which moves at an average transportation charge of \$2.27 per ton. On this coal the total railroad freight charge is something over \$780,000,000 annually at the present freight rates.

It is of interest here to call attention to the further fact that this 69.5% of bituminous coal which bears a definite railroad transportation charge is made up of 9% distributed through retail coal dealers to household and small industrial consumers and 60.5% consumed by carload users of coal. The latter consumers, such as railroads upon whose lines there are no coal mines, electric light and power plants, street railways, gas works, by-product coke plants, manufacturing establishments of all kinds, exporters of coal and ship bunkering concerns, pay the freight on that coal themselves; so that their delivered price is made up of the f. o. b. mine price plus the railroad freight on the coal. For the three months of January, February and March, 1922, the general market level of bituminous coal prices for the United States as a whole averaged between \$2.05 and \$2.33 per ton for run of mine coal. By run of mine coal I mean the coal just as it comes to the surface, without any further cleaning or preparation than what it has received from the miners underground. Bituminous coal is sold not only as run of mine but also in a number of different sizes ranging from fine screenings to eight-inch lump. Just as the freight rates on bituminous coal varied from 90c per ton to more than \$7.00 per ton according to the haul, so also the open market prices for bituminous coal during the winter ranged from 75 cents per ton for screenings to \$5.00 per ton for the highest grade of especially prepared domestic lump coal.

Before passing on from the subject of railroad transportation of coal I desire to call your attention to another significant fact. Not only is it true, as I have already pointed out, that the freight charge on coal makes up over one-half of the total delivered cost of coal, but it is also true that the freight charge on coal constitutes a much larger percentage of the total delivered cost than is the case with almost any other commodity, and also that the increases in freight rates granted during and since the war have borne with special hardship upon bituminous coal. These facts may be best shown by a few typical illustrations taken from actual shipments before the beginning of the strike.

Let us compare coal with another bulk basic commodity like cement. There is a considerable movement of cement from Allentown, Pennsylvania, to Fairmont, West Virginia. Similarly bituminous coal moves in the opposite direction from Fairmont, West Virginia, to Allentown, Pennsylvania. In 1914 the freight rate on a carload of cement was \$75.00, or 22.1% of the value of the shipment. The freight rate on a carload of coal was \$87.75, or 58.5% of the value of the shipment. See now how the increases in freight rates between 1914 and 1922 affected these figures. In January, 1922, the freight rate on the cement had been advanced to \$142.50, and now constituted 41.9% of the value of the cement. Meanwhile the freight rate on the coal had been increased to \$160.65, or 107.1% of the mine cost of the coal. In other words, while the actual increase in the rate on coal was only \$5.40 more than that in the rate on cement, that increase constituted 48.6% of the value of the carload of coal and only 19.9% of the value of the carload of cement.

It will be readily seen that if such a relation existed in the case of cheap bulky commodities it would become still more striking in the case of more valuable articles. Without unnecessary details let me quote two other illustrations. Cotton is shipped from Opelika, Alabama, to Birmingham, Alabama, and there is a reverse movement of bituminous coal. In 1914 the freight rate on cotton was 1.4% of the value of the commodity, while that on coal was 50%. As a result of rate increases the freight rate on cotton in January, 1922 was 3% of the value of the shipment, while that on bituminous coal

was 95.2% of that value. In other words the increase amounted to 1.6% of the value of the cotton, and 45.2% of the value of the coal.

On the shipment of automobiles from Detroit to Athens, Ohio, and of bituminous coal from Athens, Ohio, to Detroit, we have the following corresponding figures. In 1914 for automobiles the freight rate was 1.1% of the value of the shipment, while on the coal the rate was 63.9% of that value; in January, 1922, for automobiles the percentage was 2.4% and for bituminous coal 137.2%, showing an increase in the case of automobiles amounting to 1.3% of the value of the shipment, and in the case of bituminous coal to no less than 73.3% of the value. These illustrations are sufficient to give force to the point often made, that the transportation charge on coal is so high as to constitute a serious burden upon the consumer, and furthermore that the method of increasing freight rates in recent years has greatly augmented that burden.

While bituminous coal for household use constitutes between 11% and 12% of the total output, about 3% out of this 12% is consumed in the vicinity of the mines and does not move on railroad lines. On the remaining 9% freight is paid from the mine to the retail dealer's yard. It then must bear an additional transportation charge, namely, the transportation cost of the retail delivery of the coal. Little definite detailed information is available as to this particular item of transportation cost. Inquiry among representative retail dealers, however, indicates a range in transportation costs for the delivery of domestic bituminous coal of from 70 cents per ton to \$1.75 per ton. The low delivery costs are obtained where large lots are delivered regularly in 5 to 10 ton trucks. The high costs are incurred in small irregular deliveries to householders. The difference in the volume of deliveries may double the cost of delivery in summer as compared with winter. It should be clearly understood here that haulage cost is only a part of the cost of retailing coal. Office and yard employees' wages and salaries, insurance premiums, taxes, telephone and telegraph charges, allowance for depreciation of plant and equipment, and losses due to degradation and deterioration of the coal handled, constitute a large part of the total cost of retail coal distribution, just as many other items besides haulage go to make up the total cost of mining coal.

What is the prospect for a reduction in some of these transportation costs in the prices of bituminous coal?

So far as the haulage cost in the mine is concerned, reductions in wage scales at the bituminous mines will, of course, correspondingly reduce the haulage cost of the coal, and there is a constant progressive improvement in mine haulage facilities and methods which tend to lower costs.

With respect to railway transportation charges on bituminous coal, the Interstate Commerce Commission now <sup>1</sup> has under consideration the evidence submitted in its general inquiry into the present level of freight rates. As railroad operating costs decline we may expect a decline in the railroad transportation charges on coal.

With respect to the cost of delivery of bituminous coal by retail dealers, so far as wages paid employees of retail coal concerns may be reduced, a corresponding reduction in such retail delivery costs may likewise be anticipated. Better methods of distributing household coal may also gradually operate in the same direction.

It is frequently suggested that a steadier movement of coal from the mines to the user would materially lower the transportation charge. This opinion is predicated on the assumption that bituminous coal moves to market with great seasonal irregularity. Examination of the facts, therefore, may be enlightening as to the possible economies in the transportation of coal which might be effected by an equalization of summer and winter movement.

I have analyzed the production of bituminous coal as reported by the United States Geological Survey month by month for the last nine years, averaging the monthly production for the six summer months, April to September, in comparison with the production for the six winter months, from October to March. Such analysis shows that of the total output of bituminous coal during these nine years, 48.9% was produced and shipped from the mines in the six summer months and 51.1% in the six winter months. Considered as a whole, therefore, the bituminous coal industry is not at all a seasonal

<sup>1</sup> April 28, 1922. The decision handed down by the Interstate Commerce Commission on May 16, 1922, reduced all freight rates, including those on bituminous coal, approximately ten per cent, effective July 1, 1922.

industry ; in fact, but few of the great industries of the United States approach it in steadiness of operation. Whatever economies might be expected from an equalization of summer and winter movement would necessarily be confined to particular coal-mining districts where the movement of coal is seasonal.

I realize that a general statement for the industry as a whole, and a general average for the industry as a whole, is somewhat like the average temperature of the patients in a hospital. The average may be pretty nearly normal and yet a particular patient may be seriously ill.

On the same principle, while the average seasonal variation for the whole bituminous coal industry is low, there is seasonal movement in some mining districts. This is notably true in the western part of the United States, where the chief consumption of bituminous coal is in the households and where the requirements of railways and industrial establishments are comparatively small.

At this point let me direct attention to the difference in summer and winter consumption of some of our major industries. Studies by the United States Geological Survey indicate that the railways of the United States consume only 10% or 15% more coal in winter than in summer. The great public utilities, gas plants, electrical plants, street railway systems, by-product coke plants and the steel industry show similar very slight differences between summer and winter consumption of coal. The cement-manufacturing industry consumes more coal in the summer months than in winter. Throughout the great Appalachian coal-mining fields, which produce some two-thirds of our total annual output, the great bulk of the production goes to these transportation and industrial users. The slight decline in their summer demands upon the mines is counterbalanced by the summer shipments up the Great Lakes to the Northwest, and by rail and water both into Canada and into New England for storage against the succeeding winter's requirements. Thus, throughout all these great coal-producing districts there is no important seasonal fluctuation in the production and shipment of bituminous coal.

The studies of the United States Geological Survey already mentioned show that the one striking difference in amount be-

tween the summer and the winter consumption of bituminous coal is found in the consumption of households, the domestic users. From a winter maximum of 10,000,000 tons per month, their consumption drops in the summer to but little over 2,000,000 tons per month. Here is a winter maximum five times as great as the summer minimum compared with only 10 to 20% difference in the case of the railways and industrial consumers.

Equalization of the summer and winter movement of coal from the bituminous mines, therefore, considered from a practical standpoint and stripped of all optimistic misunderstanding, comes simply and squarely down to a question of persuading the domestic consumer to put in his household coal in fairly regular quantities throughout the year. He who would regulate the production of bituminous coal for the purpose of bringing about steady mine production in the interest of coal mine operators, employees and consumers, should understand clearly that the real regulating must be applied not to the mines, but to the domestic user of the product.

It is proper at this point to consider what means may be employed to attempt to equalize the shipments of household coal from the mines throughout the year. Seasonal variations in freight rates have been proposed for this purpose. The National Coal Association has neither advocated nor opposed this measure. Operators in some parts of the country favor seasonal freight rates; other operators oppose the project. It is claimed that a spread between summer and winter rates will induce enough householders to buy coal during the summer so that the production of this type of coal and operation of the mines producing it will be stabilized throughout the year. Opponents of this proposal assert that in most districts a very wide spread would have to be employed in order to bring about such a result, because it would have to compensate the consumer for the additional expense entailed in carrying his coal supply for some months and for any degradation of the coal while in storage. In the mining districts which are in most need of summer business, the mines of Oklahoma, Kansas, Iowa and Illinois, the coal deteriorates decidedly in storage even in the householders' cellars, while the output of the lignite mines of Colorado, which furnish the fuel of Denver, eastern

and western Kansas, and Nebraska, will not store at all, but must be used fresh from the mines.

Opponents also point out that the increased railroad rates on coal in the winter time would have to be paid by those consumers who can least afford to pay the charges, namely: the poorer class, those householders and consumers who have neither the facilities nor the money to permit them to take advantage of the lower summer rates. Such a system, therefore, would simply penalize these poorer consumers of coal and benefit their richer neighbors at their expense. Railroad officials object that a decided change in freight rates on a given date would result in shipments being withheld just prior to a decrease in freight rates and being increased prior to an advance in rates, with a consequent irregularity of mine and railroad operation in the period immediately preceding and following the change in rates.

It has been suggested also that producers of bituminous coal should make a difference in their prices at the mine, reducing the price levels in the spring and gradually increasing them through the summer, so as to persuade the consumer in that manner to take in at least a part of his coal supply during the spring and summer months, thereby stabilizing production.

It will be readily seen that much of what has been said as to seasonal variations in freight rates applies here with equal force. In addition, it should be pointed out that competition in the open market normally reduces prices to their lowest levels in the early spring months when demand is at a minimum. Since bituminous coal prices are determined by competition in the open market no individual operator, or group of operators is any more able to arrange in advance a schedule of prices month by month throughout the year than a grower of hogs in Indiana can determine in advance the price at which he will sell his hogs in different months. It has been found possible for distributors of anthracite coal to put arrangements of this character into effect, but they are dealing with a commodity which can be stored readily and of which the production is limited by nature, so that methods of marketing the output can be applied there which are wholly impracticable in the case of bituminous coal.

It is frequently urged that coal producers should store a

part of their output at the mines in summer and thus render the operation of their properties more stable and regular. This proposal has the defect of being impractical. Coal mines are organized, equipped and operated to send coal forward on a continuous journey from the face of the coal seam to the boiler room of the consumer. The production, transportation and distribution of that coal is obtained at the most economical cost when that movement is uninterrupted. As it comes from the underground mine wagons coal is dumped directly into railroad cars and shipped straight through to the plant or retail yard of the buyer. That is the most economical manner in which coal can be produced and moved. If it is carried two or three miles from the face of the coal seam underground out into the daylight at the mouth of the mine and there dumped on the ground or put into storage bins from which it must be again loaded into cars, there is an increase in the cost of the coal consequent upon the additional handling involved.

There is also a certain degradation and deterioration of the product in storage. This stored coal must be sold by the producer who has stored it at a higher price than his freshly mined coal, if he is to avoid a loss on the operation. But on account of the deterioration of the product during storage this stored coal for which he must ask a higher price is a less efficient and less desirable fuel than his freshly mined coal which his salesman can offer at a lower price. If he should attempt to equalize his prices or place a sufficient premium upon his freshly mined coal to allow him to sell his higher-cost storage coal at a discount he will merely invite numerous competitors to take his business away from him through their offers of freshly mined coal at prices below his quotations. In short, a producer who should store considerable quantities of his own coal at the mines would inevitably find himself caught between the competition of his own freshly mined coal and his storage coal, and would have to accept an inevitable loss on the transaction in consequence. No sane business man would attempt any such enterprise, nor would he get any sane banker to finance it even if he were foolish enough to try it.

The proposal is impracticable for another reason. The mines already open have an over-capacity of approximately

40%. In other words, these mines can currently furnish 40% more freshly mined coal than the country needs. In the absence of strikes at the mines the only thing which has ever prevented the mines from meeting all demands of consumers with current daily shipments of freshly mined coal direct from the mine tipples has been the inability of the railway lines to transport the tonnage demanded by consumers. These consumers have never failed to get their coal because of inability of the mines to produce it, but only through the inability of the railroads to handle it when shipped. Now, if the railroads in time of maximum demand are not able to place railroad cars enough at the mines to carry away the coal that is being mined from day to day, what opportunity would a mine operator have to obtain cars to take coal from storage in addition to shipping his usual daily output?

As a matter of fact, there is already a tremendous storage of coal in the United States, not in the mining districts, but where the storage ought to be, namely, in or adjacent to the consuming centers. Consumers and wholesale and retail distributors of coal in the United States have provided facilities in which they regularly store from 40,000,000 to 50,000,000 tons of bituminous coal annually. Just prior to the signing of the Armistice they had stored over 60,000,000 tons and at the beginning of the present strike they had utilized these facilities to store approximately 65,000,000 tons, in addition to the amount upon the docks at the head of the lakes. If the capacity of these docks is included, the total possible storage by consumers and distributors of coal in the United States exceeds 70,000,000 tons. This is practically all storage by the consumers, who own these great stocks and are, therefore, insured against any raising of prices on this tremendous tonnage. Storage of this kind has developed wherever it is practical; that is, wherever the service to the user of the coal in actual practice justifies the investment and the expense of installing and operating the facilities for storage and compensates him for the deterioration of the coal.

The greatest future saving in the cost of moving coal from the mine to the user will doubtless come not through the adoption of artificial devices in the coal industry, but through transporting the energy in the coal instead of the coal itself. By

this I mean that long-distance, high-tension transmission of electricity and the transmission of gas manufactured from the coal will be the practical means of reducing the transportation cost to the user of the energy of coal. Engineers already look forward to utilizing a large part of the output of bituminous coal at the mines or in the immediate vicinity of the mines and to transmitting from the mines to important consuming centers in the form of electricity or gas the energy thus developed from the most efficient combustion of the coal. They also look forward to a much more general use of gas as a domestic and household heating fuel than at present. Such transmission of energy from the mines would go far to remove coal from the rails of our transportation systems, upon which coal now constitutes approximately one-third of all the freight moved. Improvement in the manufacture of gas from coal, with the consequent wider use of gas as a domestic fuel, is expected to reduce the ultimate cost of heating our dwellings. There is not time here to discuss the details of developments in these directions. Let me merely say that competent authorities believe the future will bring almost revolutionary changes in the transportation of coal through the means just indicated.



## APPENDIX

THE SEMI-ANNUAL MEETING (FORTY-SECOND YEAR) OF  
THE ACADEMY OF POLITICAL SCIENCE,  
NEW YORK CITY, APRIL 28, 1922

The Committee on Arrangements, which also served as the Program Committee, planned for three sessions at this meeting to consider the three most important problems growing out of the actual experience of the country with, and operations under, the "Transportation Act, 1920." The Academy, at its Annual Meeting in November, 1919, had discussed quite fully the railroad problem in all its various aspects at the close of the war and while the railroads were still under Federal control. The very substantial volume on "Railroad Legislation" (*Proceedings of the Academy of Political Science*, Vol. VIII, no. 4, Jan., 1920, 268 pp.), which contains the papers and addresses presented at that meeting, gives a good account of the considerations under discussion in Congress while the Transportation Act was still in its formative stages. This volume, together with the text of the Transportation Act, 1920 (Act Feb. 28, 1920), which is too voluminous to reproduce here, should be studied as the basis of the program of the meeting of April 28, 1922.

The three problems which seemed to the Committee to cover the most important matters of present public interest and to serve as a means of following up the discussion of railroad legislation at the Annual Meeting of the Academy in November, 1919, are: (1) The labor provisions of the Transportation Act; (2) The general railway policies of regulation and control with respect to the general or public welfare; (3) Freight rates and business revival. To each of these a special session of the meeting of April 28, 1922, was devoted.

The thanks of the Academy are due to the railway executives and to the economists and publicists who have specialized in transportation problems, who gave generously of their time and service in the work of the Committee on Arrangements, and in the preparation of papers and addresses delivered at the meeting.

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# THE PROBLEM OF RAILROAD CONTROL

EMORY R. JOHNSON

Dean of the Wharton School of Finance and Commerce,  
University of Pennsylvania

**F**OR fifty years the American people have almost continuously had under consideration the problem of railroad control. The particular questions to be solved change decade by decade with variations in economic conditions and with the evolution of political ideals and institutions; but the railroad problem, like the poor, is always with us, and is at all times fundamentally the same—how can the public secure adequate and efficient transportation services at rates and fares that are reasonable and just to all parties concerned.

This is a period of economic reconstruction. The processes of production, transportation and trade were so disorganized by the World War, and the powers of economic recuperation were so enfeebled by that great conflict, as to make it inevitable that the world should for a period of years be slowly struggling back to its former virility. The railroad problem of the hour is part of a world-wide economic disorder, and it is not to be hoped that the difficulties confronting American railroads can be fully overcome until the nations of the world are again functioning normally in their political, economic and social life. However, while the condition of the railroads of the United States is a part of a general situation, the railway problem in this country has its particular aspects which may well be considered with a view to determining what public policy should be adopted and what, if anything, can be accomplished by legislation. The present problem will be better understood by reviewing briefly its antecedents.

## *The Problem of 1919*<sup>1</sup>

When fighting was brought to an end by the armistice, the railroads of the United States had been under government

<sup>1</sup> For a discussion of the problems of railroad regulation as they presented themselves in 1919, consult the papers contained in the volume containing the proceedings of the Annual Meeting of the Academy of Political Science, held in New York City, November 21-22, 1919. Published as vol. viii of the *Proceedings* of that Academy.

operation for somewhat less than a year, but the period of government operation was extended to March 1, 1920, a total of twenty-six months. Throughout the year 1919, earnest consideration was given by all people to the question of the future railway policy of the United States. Out of the discussions in the press and on the forum, there not unnaturally emerged three distinct views, each of which was urgently championed. Government officials of the railroad administration led by the Director-General of Railroads, Mr. William G. McAdoo, urged Congress to extend the period of federal operation for five years from the first of January, 1919. It was urged by Mr. McAdoo, and for a time by his successor, Mr. Walker D. Hines, that the country should avail itself of this opportunity to ascertain what could be accomplished by the government operation of railroads. He saw, or felt that he saw, great opportunity of accomplishing the unification of the transportation systems of the United States by government operation. He pictured to himself a national transportation system in which railroads, waterways and other agencies were so coordinated as to be of maximum efficiency and economy. It was an attractive dream, but its realization would have involved the success of the government of the United States in the operation and development of the railroads and other transportation facilities. As is usual with men of the promotive type, Mr. McAdoo kept his mind upon the desired goal, and ignored intervening obstacles.

It was inevitable that agitation for the adoption of a policy of government ownership and operation should follow the taking-over of the railroads by the government for operation as a war measure. The propaganda for government ownership as a permanent policy was led by the brotherhoods and unions of railway employees, whose leaders evidently felt that they could more readily control wages and working conditions in a régime of government ownership and operation. The leader of the propaganda was Mr. Glenn R. Plumb, an attorney of the brotherhoods, who presented an ingenious plan for the purchase of the railroads by the government and for their operation by a board of fifteen men, ten of whom were to consist of the railway employees and officials, the other five being representatives of the public. The Plumb plan received the official sup-

port of the railway employees' organizations, although by no means the united support of all the members of these associations, but the plan met with little, if any, support on the part of the public generally.

As the year 1919 progressed, it became increasingly evident that the great majority of the American people and their representatives in Congress were in favor of the return of the railroads to their corporate owners and the resumption of private operation of the railroads. Upon numerous questions of public policy, such as competition, rate regulation, the adjustment of wages and working conditions etc., there were marked differences of opinion, but upon the fundamental question as to the desirability of private ownership and operation of railroads in the United States, there was no serious question in the mind of the public.

While it is probable that the majority of the people in the United States, had they been given an opportunity, would have declared in favor of the continuance of competition among private railroads, it is also true that those persons who have made a careful study of railroad questions saw clearly that there should ultimately, if not immediately, be a great reduction in the number of railroad corporations. There were one hundred and eighty-seven railroad systems of class one (companies having annual gross earnings of a million dollars or more), and it was not difficult to see that this number was excessive and that many of these railroad companies, roughly forty per cent of them, were too weak, because of their past history, their existing traffic opportunities, or their present financial status, to render the public efficient service and to insure the sections of country they served future railroad systems, vigorous and progressively efficient.

Railway consolidation was realized by the clear-sighted to be an ultimate, if not immediate, necessity. There was some sentiment in favor of dividing the country up territorially and creating in each of those sections a single railroad system, built up out of the numerous lines owned by existing corporations. In accordance with this plan, a federal corporation would have been created to take over the railroads in each section. This would have been the adoption of the principle of monopoly in the future management of the railroads and would probably

have been a mistake. When Congress came to act, it favored the maintenance of competition among private railroads, but provided for their voluntary consolidation. There were many in favor of compulsory consolidation, but it did not receive popular support, at least, the support of the House of Representatives. This is one of the questions which the American people must reconsider. Consolidation must be brought about before the railroad problem can be finally and satisfactorily solved.

It was evident in 1919 that the government was incurring a large deficit in the operation of the railroads, and that it would be impossible for the corporate owners of the railroads to operate their properties profitably without a large increase in net revenues. Expenses of operation had greatly increased during the war, partly as a result of the war, and partly because of policies adopted by the government in dealing with railway labor. The problem that had to be considered first of all in returning the railroads to their owners was the restoration of railroad credit. Economic conditions generally were depressed. Railroad operations were unprofitable. The corporate owners of the railroads would need capital to repair the wastes of war and to provide facilities for the traffic demands of the future. This capital must come from private sources. Would investors advance the funds? If they did not, the railroads would deteriorate unless the government advanced the necessary capital, and if the government were to embark upon such a policy, ultimate public ownership would be the probable consequence, as has been amply shown by the experience of other countries in similar enterprises.

While the public was desirous that the capital required by the railroads should come from private investors, it was clear to everybody that the time had come for the federal regulation of the issue of railroad securities. Some of the states had for many years regulated the issue of securities, but only a small minority of the states had attempted to make such regulation thorough and effective, and even those states were able but partially to accomplish their purpose, because regulation was not general on the part of all states. Massachusetts and New York might have laws for the regulation of railroad securities, but a Connecticut corporation like the New Haven might be

wrecked by the pyramiding of securities in the interest of financial speculators. Thus the public decided in 1919 that when the railroads were returned to their owners, the government of the United States should be given authority to pass upon the advisability of proposed investments and upon the nature and volume of securities that may be issued to secure funds for carrying out approved enterprises.

Any policy intended to reestablish the credit of the railroads after their return to their corporate owners must necessarily involve a policy of rate regulation different from the policy that had been followed prior to government operation. For some years before the government took over the railroads, rates had been so regulated by the Interstate Commerce Commission as to limit the earnings upon railroad investments as a whole to such a low rate of income that investors had already begun to avoid railroad securities. Between 1912 and 1917, a few railroads, even the more prosperous ones, were able to sell stocks at a figure which justified the issue of securities in that form. Most of the new capital required by the railroads had to be obtained by the issue of bonds, and thus the desirable ratio of 50-50 as between stocks and bonds had to be abandoned, and the indebtedness of the railroad companies, at least of many of the companies, became so large as to endanger their financial stability.

It was clear that the future control of railroad rates by the government should be constructive rather than merely corrective in purpose. The laws of 1906 and 1910 had vested the control of rates and revenues in the government, which thereby became responsible for the net revenues and the financial integrity of the railroad corporations. If the government were, upon the return of the railroads to their owners, to continue to determine the revenues of the carriers, and if it were allowed to sit in judgment upon security issues, it was seen that it would be necessary for the rate-making authority, that is, the Interstate Commerce Commission, to be responsible for the establishment of rates that would yield the carriers revenues sufficient to enable them to render efficient services and to provide the country with a system of railroad transportation capable of progressing with the development of the country. Any policy of rate control that stopped short of this degree of responsi-

bility on the part of the government would be disastrous to the American railroad system.

When it became evident that the federal government in the regulation of the railroads must assume responsibility for their financial stability and for rates and revenues that would enable the country to enjoy a progressively efficient system of rail transportation, it was clearly seen that the central government must not allow its rate policies to be negated or seriously interfered with by the states in their control over charges for intra-state transportation.

In the Minnesota Rate Case in 1913 (Simpson, et al. *v.* Shepherd, 230 U. S. 352), and in the Shreveport Rate Case in 1914 (234 U. S. 342) the Supreme Court had established the principle that the state rate must give way to the federal rate when the charges established by the state limited the regulatory powers of the federal government or established an unreasonably discriminatory relationship between the state and interstate rates. The order issued by the Interstate Commerce Commission in the Shreveport case was upheld by the court, but it has been found difficult in practice so to apply the principle established by the Shreveport decision as to prevent a serious interference on the part of the states with the regulation of interstate rates by the federal government. The correction of this situation was one of the objects to be accomplished upon the return of the railroads to their corporate owners for operation.

None of the problems connected with the return of the railroads to their owners was more perplexing or more provocative of divergent views than the policy that should be adopted for the future regulation of the wages and working conditions of the army of railroad employees. From 1912 to 1917 the country was frequently confronted with the menace of a paralyzing railroad strike, and railroad labor problems were acute throughout this five-year period. If there was a justification for the assumption of the operation of the railroads by the United States Government, it was to be found mainly in the fact that during the period of the war the country could not permit the railways to be tied up or even seriously hampered by labor controversies. The other major reason for government operation was that large expenditures must be made promptly

by the railroads in order to meet the extraordinary demand for service placed upon them by the government in the prosecution of the war.

In my judgment, both of these problems could have been met without resort to government operation. The Railroad War Board, established by the railway executives in the spring of 1917, was bringing about the coordination of the railroads, and more traffic was being moved than had ever previously been transported. Acting under his war powers, the President could have given this railroad war board greater authority, and financial support might have been given to the railroads under conditions that would have safeguarded the public interest. A discussion of what might have taken place at the end of 1917 is, however, academic. The railroads were taken over by the government in order that the executive authority might remove the menace of strikes, might relieve the railroads from the limitations imposed by existing anti-trust laws, give the common carriers needed governmental aid, and hasten the coordination of the several railroad lines into a unified and efficient transportation system.

When, in 1919, consideration was being given by the public to the conditions under which the railroads should be returned to their corporate owners, much thought was given to problems of service, with the hope of retaining under private operation the service advantages of unified management that had been secured during the period of government control. It was realized by the public that railroads and waterways ought not to be kept dissociated and forced to serve as unrelated competitors. The necessity of providing for a unified service by connected and cooperating rail and water lines was realized. It was also clear that terminal operations in the future could be brought about by treating each urban district, no matter by how many railroads it might be served, as a single terminal in which the various freight yards and stations of the several carriers and their tracks and yards were coordinated for the performance of a unified service. The realization of this project for the reorganization of terminals will take time, but the advantages to be gained by it are manifest.

When the government operated the railroads, the entire equipment of different types of freight cars was used without

much regard to ownership. The railroad stock in the country was utilized as a whole. Freight cars became legal tender and remained in circulation when and where needed, instead of being redeemed by frequent return to their owners. This use of rolling stock was made to meet a national emergency, and it was recognized by the public that provision should be made for its similar use in the future to meet any crisis that might arise under peace or war conditions.

*The Solution Attempted by the Transportation Act of 1920*

To provide for the return of the railroads from the government to their owners, under terms that would meet the railroad situation as it had come to be understood during the year following the armistice, the Transportation Act of 1920 was passed by Congress. It was approved February 28, and provided for the return of the railroads to their owners on the first of March of that year.

The law provided for the maintenance of competition in the operation of the railroads, the grouping of the railroads territorially or otherwise not being required. The Act, however, gave the Interstate Commerce Commission power to compel the owner of a railroad terminal to permit other carriers to use the terminal in return for reasonable compensation. Thus a beginning was made in what will ultimately be the unification of railroad terminals. Competing carriers were also given permission to pool their traffic and earnings after securing approval of the Interstate Commerce Commission. The consolidation of railroads while not made compulsory was made possible. The law requires the Interstate Commerce Commission to work out a plan for the grouping or consolidation of the railroads into a limited number of systems that

shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties throughout the service as rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

The law thus contemplates the ultimate consolidation of railroads by voluntary action of the carriers and the maintenance of competition among the permanent systems. The Senate Bill

provided for the compulsory consolidation of railroads, but in conference the Senate gave way to the House, and voluntary consolidation was agreed upon as a compromise. It is probable that future legislation upon railroad consolidation will be necessary, and that the government will ultimately be obliged to compel the grouping of railroads into the contemplated limited number of permanent competitive systems of relatively equal strength and stability.

The most constructive parts of the Transportation Act of 1920 were those providing for the restoration of railroad credit, for the regulation of railroad finances, and for the establishment by government authority and responsibility of rates sufficient to yield a rate of return designated by the statute as reasonable. Some of these provisions were temporary, others were of a permanent nature. The temporary provisions included (1) the proviso that rates in force at the time of the return of the railroads to their owners should remain in effect until changed by state or federal authority, and that no reduction in such rates should be made during the first six months of private operation (before the end of this period, rates were largely increased by the Interstate Commerce Commission); (2) the provision that the government guarantee of the net return which had been assured the railroads during the period of government operation should be continued until September 1, 1920; and (3) the appropriation of three hundred million dollars as a revolving fund from which loans might be made to the carriers to help tide them over the period of transition from government to private operation. The carriers were also to be allowed to fund their indebtedness to the United States government for a period of ten years at the rate of six per cent per annum.

The most important permanent provision included in the Transportation Act with the intention of giving financial stability to the railways of the United States, was that which concerned the future policy of rate-making and rate regulation. A new principle of rate control was adopted. The Interstate Commerce Commission was authorized to divide the United States into an appropriate number of districts for rate-making purposes, and the Commission has established four districts:—Eastern, Southern, Western and Mountain-Pacific. The aggregate value of the railroad property devoted to the public service

in each of these districts was to be determined, and the Commission was to authorize and establish rates and fares that will yield the carriers a reasonable return upon the aggregate value of the property. For the two years following March 1, 1920, the statute declared a reasonable return to be  $5\frac{1}{2}$  per cent per annum, and the Commission was authorized to allow the carriers to earn and retain an additional  $\frac{1}{2}$  per cent upon the aggregate value of railway property, this additional  $\frac{1}{2}$  per cent to be devoted to improvements and not to be capitalized. Any carrier's earnings in excess of 6 per cent per annum are to be divided with the government. After March 1, 1922, the Interstate Commerce Commission is to determine what rate per cent per annum upon the aggregate value of railroad property shall be a reasonable return to the carriers.

This policy of rate control differs radically from the policy adhered to prior to government operation. Up to that time regulation was exercised for the purpose of preventing the carriers from charging unreasonable rates. It was regulation of a corrective and negative character. In the future, the Government is to act positively and to establish reasonable rates, and the statute for the first time defines what the standard of reasonableness shall be. This is a large forward step in government control of railroads in the United States.

In the regulation of rates, the difficulty of the problem has grown mainly out of the fact that charges over competitive routes for similar services must be the same; also, that for like services in different sections of the country there cannot properly be wide differences in the charges. Some railroad lines are favorably located, have abundant traffic, and are economically and profitably managed. Other lines, over which the charges in many instances must be the same as those of their prosperous competitors, are poorly located, have light traffic, and can be operated profitably only under the most favorable conditions. If rate systems are established that will yield profits to the "weak sisters", the stronger brothers will be favored with larger rail rates than the public should be required to provide. This situation cannot be altered except by the consolidation of all the railroads into a limited number of permanent systems of relatively equal strength. For this reason consolidation must ultimately be accomplished. If it does not

come about voluntarily, as it probably will not, it must be brought about by the government.

One of the most satisfactory provisions of the Transportation Act of 1920 is the one which writes into the law the principle established by the Supreme Court in the *Shreveport* decision. A rate established by a state authority must give way to the lawful interstate rate whenever the Interstate Commerce Commission "after full hearing finds that any such [state] rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intra-state commerce on the one hand, and interstate or foreign commerce on the other". In the case of an unreasonable discrimination caused by the state rate, the Interstate Commerce Commission may prescribe the intra-state rate thereafter to be charged, "the law of any state or the decision of a state authority to the contrary notwithstanding". However, in the hearing and the determination of cases involving the relation of interstate and intra-state rates, the Interstate Commerce Commission may confer with the authorities of the states, and avail itself of the cooperation of state authorities in the enforcement of any provisions of the law. The rate-regulating authorities of most of the states have united in a case that is now pending in the Supreme Court of the United States to determine whether this part of the Transportation Act of 1920 is an invasion of the constitutional rights of the states. What the decision of the Supreme Court will be remains to be seen, but the Court can hardly fail to follow the course it adopted in reaching the *Shreveport* decision.

In the future, railway properties and railroad investments are not to be made the prey of unscrupulous speculators as they have too frequently been made in the past. Permission must be secured from the Commission for the extension of a railroad line or the construction of a new road, and the Commission must be convinced of the public necessity and convenience of the proposed investment. Securities to obtain new capital are to be issued only upon approval of the Commission, and the securities shall be put out "upon such terms and conditions as the Commission may deem necessary or appropriate in the premises". Public authority now sits in judgment upon the necessity of any railroad investments, determines what amount

of new capital it is necessary to invest, decides what kinds of securities may be issued and the terms upon which these securities may be offered to the public. The days of stock-watering and "high finance" in the railroad business are presumably at an end.

The labor provisions of the Transportation Act of 1920 are an example of the kind of compromises all too characteristic of important legislation. The Senate, led by the able Chairman of its Committee on Interstate Commerce, Albert B. Cummins, adopted the principle of compulsory arbitration of disputes as to wages and working conditions in the railway service. The Committee on Interstate and Foreign Commerce of the House of Representatives favored the adjustment of disputes as to wages and working conditions by boards composed of representatives of employers, employees and the public; while the brotherhoods and unions of railway employees championed the continuance of national boards of adjustment, such as had been set up during the period of government operation of the railroads. These were dual boards of adjustment composed of an equal number of representatives of the employees and the carriers, there being no members of the public on the boards. When the House bill was under consideration by the House of Representatives, the brotherhoods secured an amendment, substituting their general plan of dealing with labor disputes in place of the plan recommended by the Committee on Interstate and Foreign Commerce. When the two bills came under consideration in the Conference Committee of the two houses, the House conferees prevailed. The representatives of the Senate gave up the plan of compulsory arbitration and agreed to a plan similar to the one that originated in the House Committee on Interstate and Foreign Commerce.

The law provides that the carriers and their employees shall first seek by direct negotiation to agree upon wages and working conditions. If such negotiations fail, the questions as to working conditions, not as to wages, may be considered by boards of adjustment created for a single railroad company, for a section of the country, or for the United States as a whole. These boards are to be established by agreement of the carriers and employees. They are to be dual in character and composed of representatives only of employers and employees. In

case a board of adjustment is unable to settle a dispute as to working conditions, appeal may be taken to the Railroad Labor Board provided for by the Act. This board is composed of nine men, appointed by the President, three appointees to be from nominees made by the employees' organizations, three from nominees made by the railway executives, while the other three are to be such representatives of the public as the President may select. This tripartite board has jurisdiction over disputes as to wages and also as to working conditions. It was contemplated by the statute that disputes as to working conditions should go before the Labor Board only upon appeal from decisions of the boards of adjustment, but inasmuch as the carriers and the employees have not been able to agree upon the kind of boards of adjustment to be established, such boards have not been brought into existence, and the Railway Labor Board has, in fact, decided questions of working conditions as well as of wages.

Working conditions, other than in the train-operating services, during the period of the Railroad Administration, notably during the latter days of that period, were fixed by the adoption of national agreements; and, after the railroads were returned to their owners, the labor board, being confronted with the difficult problem of deciding what increases should be made in railroad wages, announced that the working agreements between the carriers and the unions should remain in full force until changed by agreement of the interested parties. The carriers and the brotherhoods could not agree upon modification of the national agreements, and thus early in 1921 the labor board was obliged to enter upon extended hearings to decide whether the agreements as to working conditions that had been adopted during the period of government operation should be continued, modified, or abolished. The board decided that the agreements should terminate on July 1, 1921, if, in the meantime, the carriers and the representatives of the employees had adopted other agreements, but as the carriers have not been able by negotiation to modify the agreements, they will remain in force until the labor board shall have substituted new agreements.

The effect of the labor provisions of the Transportation Act of 1920 has been to place in the hand of a single board power

to determine the wages of all railroad employees and to fix the standards of working conditions prevailing on the railroads throughout the states. Moreover, this board is entirely independent of the Interstate Commerce Commission. The Labor Board controls half or more than half of the expenses of the railroad companies, while the Interstate Commerce Commission is charged with the duty of establishing rates that will yield the carriers what the statute has established to be a reasonable return upon railroad property. Whether this plan of independent action on the part of two boards, one determining expenses, and another fixing revenues, will work successfully is an open question.

That the Transportation Act of 1920 is a genuinely reconstructive measure is evidenced by the provisions it contains regarding railway services. By this law the government has undertaken definitely to bring about better service conditions on American railroads. Regulation begins, as has been pointed out, with the exercise of judgment by public authority as to what tracks and terminals shall be constructed and how capital shall be raised for such construction and for the acquisition of additional facilities and equipment. The equipment has to be operated in accordance with car-service rules determined by the government. The joint use of terminals may be required; and, in the enforcement of the Act, the carriers will be required so to develop their terminals as gradually to bring about the much-desired unification of terminals in the important railroad centers. Moreover, the interchange of traffic by railroads and waterways and provisions for through-shipment and through-billing by joint rail-and-water routes are definitely provided for.

#### *Developments Since Resumption of Corporate Operation*

Whatever merits the Transportation Act of 1920 may possess, and it is unquestionably a constructive measure of great promise, a series of events has prevented the law from accomplishing what it was hoped might be brought about. The law was enacted during a period of great business activity that followed the close of hostilities; but, before the law had been in force a year, the United States was suffering along with other countries from a world-wide depression in business. The plight of the railroads in the United States has been serious

since the beginning of 1921, and there is no promise of an immediate and prompt return to prosperous conditions.

Several important actions have been taken by the government in accordance with the provisions of the Act of 1920. Shortly after the Act became a law, there developed an acute car shortage which was accentuated in April and May, 1920, by the so-called "outlaw-strike" of yard-men and switch-men in the principal railroad terminals. Although this strike was of short duration and failed utterly, because it was carried on in opposition to the employees' unions, it added greatly to the difficulties of the railroads. In order to meet the critical situation promptly and fully, the railroads requested the Interstate Commerce Commission to take charge of car service, in accordance with the powers granted the Commission by the Act of 1920. The Commission decided that an emergency existed, and for several months it exercised as full control over car service and distribution as the railroad administration had exercised during the period of government operation. Before the end of the year 1920 railroad traffic fell off sharply and the car shortage was changed into a car surplus which has prevailed thus far throughout 1921.

The depression in business was so general as to cause a large decrease in railroad traffic and revenues. The decrease in the earnings was so great that during the early months of 1921 many railways in the United States had recurring operating deficits, and in the case of even the most prosperous railroads operating expenses were nearly equal to operating revenue.

This financial situation developed in spite of the fact that the Interstate Commerce Commission in August, 1920, had granted the railroads an increase in rates designed to enlarge freight revenues by  $33\frac{1}{3}$  per cent and passenger-train revenues by about 24 per cent. The rates authorized by the Commission in August, 1920, were based upon the assumption that the volume of traffic which the railroads then had would continue. The members of the Commission were no prophets, and they had no means of foretelling the financial depression. It came within six months after the Commission's rate order was issued. Moreover, the increase in rates granted by the Commission was made with a view to enabling the carriers to earn six per cent upon a tentative value which the Commission placed upon the

property of the railroads in the United States, subdivided territorially among the four districts mentioned above. The tentative valuation placed upon the property of the railroads was \$18,900,000,000. This was undoubtedly a conservative valuation. The fact that the total value fixed by the Commission was more than a billion and a half dollars less than the book value of the carriers' property may not have much significance, although the appraised values of the railroads, in so far as they have been determined by the Commission under the valuation act of March 3, 1913, indicate that the physical properties of the railroads as a whole will be quite equal to the amount of the assets as carried on the books of the companies. In any event, rates calculated to allow the carriers as a whole to earn but six per cent per annum in 1920 and 1921, upon their properties valued at a figure which they had reached by the opening of the world war, would necessarily have been considered conservative, if not relatively low, even had business conditions remained prosperous, as was anticipated by the Commission when the rate increase was authorized.

Railroad credit was not restored. It is clear now that it would have been impossible in 1920 to take any action that would have exempted the railroads from sharing with other enterprises in the consequences of the world-wide business depression that began at the close of 1920. The financial and rate-making features of the Transportation Act of 1920 have had comparatively little effect because the benefits they might have accomplished have been overcome by adverse economic conditions. What actually happened to the railroads may be indicated by a few figures of earnings and expenses.

The operating revenues during the calendar year 1920 were \$6,225,000,000, and exceeded the revenues of the preceding year by \$1,041,000,000, but the outlay of the railroads for operating expenses, taxes and rents in 1920 amounted to \$6,163,000,000, and was greater than the figures for 1919, by \$1,495,000,000. The result was that the net operating income for 1920 was but \$62,264,000, whereas in 1919 it had been \$516,290,000. Even in 1919, the railway operating income was only about five-ninths of the amount guaranteed to the railroads by the government during the period of federal control. When the railroads were taken over by the govern-

ment at the close of 1919, the companies were guaranteed a net operating income equal to the average for the three years ending June 30, 1917. This guaranty amounted to somewhat more than nine hundred million dollars per annum. The actual net operating income of the railroads in 1920 was thus about one-fifteenth of the average for the three years preceding the entry of the United States into the war.

The bad financial showing of the railroads for the years 1919-20 (and the situation was even worse during the early months of 1921) was caused by the extraordinary increase in expenses during the year 1920. This increase, amounting in all to nearly a billion and a half dollars, was made up of the following items: increase in payments for wages and salaries \$884,148,000, for locomotive fuel \$196,429,000, railroad ties \$28,113,000, and other items \$386,682,000.

The situation of the railroads in 1920 in comparison with their condition in 1916 is explained by the fact that during this five-year period the revenues increased  $71\frac{58}{100}$  per cent, while total expenses rose  $141\frac{71}{100}$  per cent.

#### *What Remains to be Done*

The foregoing figures are sufficient to show that the railroads can be restored to financial stability only by a large decrease in expenses. While it is probable that with the return of business to normal conditions there will be an increase in gross revenue, yet it must be remembered that the traffic of 1920 was heavy, much larger than it has been running in 1921. It is not to be anticipated that the tonnage of the railroads in the near future will much exceed that of 1920. Moreover, it is agreed by everybody that railroad revenues cannot be increased by raising freight rates and passenger fares. Any changes made in the charges must be downward. In fact, numerous individual rates are being readjusted downward in order to make possible a larger and freer flow of certain staple commodities. The future success of the railroads clearly depends upon greater economy and efficiency and upon a large reduction in the ratio of expenses to income.

Something has already been done to reduce expenses. The Railroad Labor Board by an order effective July 1, 1921, has reduced wages about twelve per cent. Some railroad companies

by their own action have reduced salaries. A twelve-per-cent reduction in salaries and wages paid in 1920 will amount to more than four hundred million dollars. Savings of an equal amount in other expenses must be made in order to put the railroads securely upon their feet. Presumably the cost of coal, fuel-oil, ties, rails, equipment and supplies will follow the downward trend of prices generally, but it is not to be expected that large reductions can be secured in the costs of material and equipment in the near future. Hope must be placed in the introduction of operating economies. The carriers, federal and state commissions, and the public must unite in efforts to reduce the terminal expenses and to bring about the maximum use of equipment and facilities. In the long run, railway co-operation and consolidations will make many economies possible, but during the next five years the greatest opportunity for a reduction in railroad expenses will be found in the introduction of economical methods of handling traffic into, out of, and through large city terminals.

It is to be hoped that it will not be necessary for the government to make large additional advances of funds to the railroads, but there is a financial measure by which the government might promptly be of much assistance to the railroads. During the period of government operation some seven hundred or eight hundred million dollars were invested by the government in improvements and betterments. Had these investments been made by the railroad companies, the funds would have been secured by the sale of securities. They would have been funded obligations. The government has, however, withheld this large sum of money from the railroads in settling its obligations to the railroads. In other words, the government has credited itself with this sum of money, and thus has withheld it from the railroads. Valuable temporary assistance would be given to the carriers, were the government to fund this investment of seven or eight hundred millions and advance the cash to the companies.

It is doubtless too early to pass final judgment upon the plan of adjusting wages and working conditions established by the Transportation Act of 1920. The labor problem is a complicated one at all times, and under present conditions of business depression, and of consequent unemployment and unrest on

the part of workingmen, the problem is more than ordinarily difficult. The continuance of the national agreements entered into by the railroad administration and the railroad brotherhoods, other than those of which the train operators are members, and the inability of the railroad companies to agree with the employees' unions as to the kind of boards of adjustment to be set up under the Act of 1920, have resulted, as stated above, in placing the whole problem of adjusting the wages and working conditions of railroad employees in the hands of the Railroad Labor Board. The direct negotiation of railroad employers and employees, outside of the train services, has been minimized and practically set aside. A national board, one-third of the membership of which is made up of representatives of the public, is fixing wages, and thus for the present is determining six-tenths of the expenses of the railroads and is fixing the rules controlling working conditions throughout the country.

It is doubtful whether the Railroad Labor Board will prove to be a satisfactory agency. I am aware that the tendency, not only in the United States, but in other countries, is toward the establishment of wages and working conditions by national boards instead of by direct negotiation of employers with employees. Nevertheless, I am not convinced that the tendency is in the right direction or that the tendency will permanently continue. It may still be that experience will demonstrate the wisdom of returning to the policy of establishing wages and working conditions by contract, by negotiation and agreement of the parties directly interested. If the task is to be taken from those directly concerned and placed with a board, probably that board should be made up only of representatives of the public. Moreover, it should surely be a board to which cases come only upon appeal, either upon appeal by the employers and employees when negotiations have failed, or upon their appeal from the decision of some local arbitration or adjustment board, which has first considered and passed upon the questions at issue.

If this opinion, here tentatively expressed, should prove to be sound, an amendment to the Transportation Act of 1920 will be found to be necessary.

Of one thing I am quite certain. The railroad systems of

the United States must be brought together into a limited number of permanent systems of relatively equal traffic possibilities and financial strength. During the next few years, the railroads will be given an opportunity to consolidate by voluntary action, in accordance with a general plan of railroad grouping determined and promulgated by the Interstate Commerce Commission. The present unfortunate financial condition of the railroads will necessarily cause the process of consolidation to be slow, and it is by no means certain that even when the railroads regain their normal financial strength they will be disposed to work out the consolidations found by the Interstate Commerce Commission to be in the public interest. Doubtless Senator Albert B. Cummins, Chairman of the Senate Committee on Interstate Commerce, is correct in believing that Congress will have to pass a law compelling the railroads to consolidate. As he stated in the Senate, in debating the bill that later became the Transportation Act of 1920,

It has been utterly impossible for any body of men to make a system of rates that will sustain the weaker railroads of the country, without giving the stronger railroads an income excessive and intolerable in its extent; and there lies the great fundamental obstacle in our system of rate-making. The Interstate Commerce Commission can no more give to each railway of the United States the return to which it is fairly entitled than it can annihilate distance or overcome any other law of nature. . . . It was obvious, I think, to the students of the subject long before the government took possession that we must adopt some plan that would remove this inherent fundamental difficulty.

The Senate bill contemplated such a grouping of railroads as would maintain inter-system competition; and it was provided that the capitalization of the consolidated systems should correspond to the actual value of the properties brought together.

The obstacles to be overcome in bringing about the consolidation of American railroads in the manner just suggested are probably greater than can be overcome by voluntary action of the carriers. Experience will probably show the necessity for the amendment of the Act of 1920 so as to provide that after a period of five or seven years the carriers shall be compelled to consolidate, in accordance with the plan adopted by the Interstate Commerce Commission. For the next year or two, the country will note what progress is made by voluntary action, and will then decide whether compulsion is necessary to bring about consolidation.

Along with the consolidation of railroads, whether by voluntary action or by compulsion of the government, should come the federal incorporation of the railroads. A law for the federal incorporation of the railroads should have been included in the Transportation Act of 1920. The draft of such a law was included in the bill prepared by the National Transportation Conference that was convened by the Chamber of Commerce of the United States. It was a simple comprehensive plan of incorporation. This or some similar plan should receive early consideration by Congress.

There remains a question concerning which there is much difference of opinion. Should the administrative regulation of the railroads, as well as the determination of rates and revenues, and the exercise of the functions closely related to rates and revenues, be vested solely in the Interstate Commerce Commission, or should a separation be made of the executive and semi-judicial tasks of regulation, and the activities of the Interstate Commerce Commission be confined to those of a semi-judicial character? I have elsewhere stated the reasons why a federal transportation board should be created, and what its functions should be.<sup>1</sup> It should not be forgotten "that the success of the whole venture of regulation of the railroads must necessarily hinge largely upon the machinery that is provided to give effect to the laws that may be enacted." The Interstate Commerce Commission has functioned successfully for the purposes for which it was created. It is, however, too large a body, and is by temperament and method too judicial in its practices, to be a highly efficient executive board.

Successive statutes have increased the membership of the Interstate Commerce Commission from five to seven, to nine, and now to eleven members, and with the increase in membership there has been a multiplication in the executive tasks to be performed. Will it not be wise for Congress, when it again gives consideration to railroad legislation, to reduce the membership of the Interstate Commerce Commission to seven men and to limit its activities to the regulation of the rates and revenues of the carriers and the administration of the bureaus

<sup>1</sup> See *Proceedings of the Academy of Political Science*, vol. viii, pp. 572-574; also *Program of Railroad Legislation*, pp. 49-56 (this volume was published by the Chamber of Commerce of the United States, Washington, D. C.).

necessarily associated with this task. If this is done, the executive functions of regulation as they have developed to date, and as they will be increased in the future, might well be entrusted to a board of five or preferably three members, executive in practice and organization, and of maximum administrative efficiency.

In general, the government regulation or control of the railroads is a problem of securing for the country a system of railroad transportation adequate to the demands upon it and at all times progressively efficient. The railroads, the waterways and the highways should develop simultaneously, and they should be so coordinated that they will together form a physically unified transportation system. The government's task is largely executive as well as semi-judicial. For these reasons, it is probable that experience will demonstrate the necessity of amending the Transportation Act of 1920 by a law creating a transportation board entrusted with the executive task of the government regulation of the railroads.

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# PRACTICAL TESTS OF THE TRANSPORTATION ACT

BY

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## PRACTICAL TESTS OF THE TRANSPORTATION ACT<sup>1</sup>

### I

THE Transportation Act of 1920 has been generally regarded as the most constructive congressional legislation in recent times. Its direct aim was to solve certain complicated railroad problems that had been growing in size and in importance for over a quarter-century. These problems became acute at the time the government took over the operation of the roads as a war measure, and it was generally apparent that the railroad properties could not be safely returned to their owners unless an honest legislative attempt was made to eliminate the accumulated difficulties of both the pre-war and the war periods. How far Congress succeeded in accomplishing this end by the Transportation Act and what further adjustments are desirable, are the subjects of this paper.

The practical and permanent features of the Transportation Act of 1920 may be summarized as follows:

*First*, it proposes to adjust railroad rates so that the carriers at all times shall be permitted to earn a reasonable return on the fair value of their property.

*Secondly*, it proposes to eliminate state interference with railroad rates and railroad financial policies.

*Lastly*, it aims to relieve the carriers from the incubus of perennial labor demands and union domination.

Let us see to what extent these admirable objects have been obtained.

<sup>1</sup> In view of the unusual interest attaching at the present time to the problem of governmental control of public utilities, it has been deemed valuable to offer the readers of the *POLITICAL SCIENCE QUARTERLY* in this issue two articles dealing with the question from different points of view. Both Dr. Sakolski, of New York University, and Professor Johnson, Dean of the Wharton School of Finance and Commerce, are scholarly specialists in the field of railroad economics. The editors, in conformity with their general policy, assume no responsibility for the opinions expressed or the recommendations advanced by the authors.—ED.

As a means of rate adjustment the new railroad act provides:

In the exercise of its power to prescribe just and reasonable rates, the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the services of transportation.

Incidentally, it should be remarked that this provision, regarded as the most important in the whole law, adds nothing new in theory or fact. Under the law, public utilities are entitled to charge rates that give "a reasonable return on the value of their property". The perpetual difficulty has been to define clearly "reasonable return" and "fair value". For almost a decade the Commission under the valuation section of the Interstate Commerce Act has been endeavoring to establish a basis of fair value. No definite policy has been adopted, nor is one likely to be finally and conclusively adopted until after years of litigation. In the rate testimony before the Commission the railroads presented the aggregate of their investment accounts as a basis of property value. In support of this data they exhibited figures of "tentative" valuations of fifty railroad properties obtained from the Commission's valuation department, showing that in the aggregate the values as "tentatively" reported were not very different from the aggregate of the companies' capitalization. The Commission seems to have seized on this point as a "safe way out", for in the decision wherein the railroads were given an aggregate valuation of \$18,900,000,000 (against a property investment account of \$20,040,572,611) it is stated that "so far as the work [of valuation] has produced results, either as to particular roads or as showing general tendencies or principles, we have given consideration thereto".

The Interstate Commerce Commission, knowing the responsibility placed upon it by the Transportation Act of 1920, un-

doubtedly was intent on carrying out the letter of the law. The rate-making section of the Act explicitly states that the Commission when determining the aggregate value of railroad property "shall give due consideration to all the elements of value recognized by the law of the land for rate-making purposes and shall give to the property investment account of the carriers only that consideration which under such law it is entitled to in establishing values for rate-making purposes." Accordingly some method of establishing railroad value other than mere reference to the investment account is required before a sound basis of rate-making can be adopted.

Nevertheless the questions of valuation and adequate rates are of immediate importance under the provisions of the Transportation Act, since, after having increased freight and passenger rates to an extent which was confidently believed to furnish revenues that would result in the maximum statutory net return on property investment, the railroads have been experiencing the lowest scale of net earnings in their history. However, unforeseen circumstances which have arisen since the passage of the Act have made the rate-making provisions difficult of practical application.

In the first place the volume of traffic of all kinds due to widespread and almost universal business depression fell off abruptly to an abnormally low amount. Secondly, the wastes and inefficiency resulting from government operation combined with the higher wages and the restrictive labor regulations enforced by the Railroad Labor Board enlarged operating expenses beyond a point of financial endurance. Consequently, when the special session of Congress convened in the spring of 1921 serious and widespread concern prevailed regarding the railroads' financial stability. As a further complication, shippers began to complain of excessive charges under the new scale of rates, so that congressmen found themselves bombarded by petitions and complaints. Farmers, manufacturers, exporters, jobbers, commercial salesmen and others, all feeling the effects of the general business depression, naturally laid much of the blame on the increased transportation charges. Railroad security-holders, likewise, held up their hands in supplication

for relief. They feared that the growing political pressure in favor of reduced railroad rates would have a most deleterious effect in decreasing the earnings of their investments in railroad properties.

It should be borne in mind that the rate provisions of the Transportation Act were essential at the time to stabilize railroad credit. The roads under government operation had exhibited such poor net returns that some sort of guaranty that higher earnings would result under private operation was required to prevent a disastrous slump in railroad securities. Congress was made to realize the situation. The result was a government guaranty of earnings during six months following return to private operation, and thereafter the statutory minimum return to be secured by higher rates. Nothing in the rate provisions of the Transportation Act, however, requires parallel increases or decreases in all freight or passenger charges to produce the statutory return on investment. The practical error of the Interstate Commerce Commission in carrying out the law was its crude method of indiscriminately making general rate increases. The resulting maladjustments must in every case be ironed out by further rate hearings and investigations. Unfortunately there has not yet been developed an agency which possesses adequate data as to the relation of freight rates to manufacturing costs or to the prices of commodities at points of ultimate consumption. Such information, scientifically assembled, to inform shippers and the public of the relation of railroad rates to commerce and living costs, is highly desirable. A coöperative organization of carriers would be the proper agency through which this information could be supplied, but no organization having authority over these subjects exists whose conclusions or suggestions could be generally accepted. Moreover small progress as yet has been made in scientific freight-rate adjustments from the standpoint of basic principles. Results of past experiences and the desire to maintain regional competition have been the chief factors in creating present freight-rate structures. The public is forced to rely upon governmental agencies to define and apply the principles which should originate with those who are conducting transportation.

Railroad rate-making is an extremely delicate and difficult task, so that when a scale of charges covering the many groups and kinds of commodities is once established, railroad traffic officials are loath to make adjustments demanded by changes in competitive forces or in business conditions. This rate rigidity cannot be easily altered under the new powers of the Interstate Commerce Commission, since, in order to create the conditions leading to the practical application of the "rate-making rule", the Commission, in addition to controlling without interference every detail of railroad policy, must provide rate zones that will tend to maintain sectional economic and competitive conditions, and, at the same time, must furnish financial stability to the carriers. To accomplish all this without serious sectional and political controversies, seems almost impossible.

Hardly less glaring than the difficult application of the "rate-making rule" to bring immediately an adequate income on investment, is the ineffectiveness thus far of the provisions for the elimination or nullification of state and local interference with railroad activities. Restrictive and punitive state railroad legislation prior to the war had grown with such cumulative intensity, that the railroads in 1916 joined in a concerted movement for an entire new scheme of railroad control, whereby the companies would be relieved of the vexatious state interferences and political railroad-baiting. All told, between 1912 and 1915, it was computed that upward of 4,000 bills affecting railroads were introduced into the national and state legislatures, of which 440 became laws. Whatever the purpose of these laws, there was almost always a certain result, viz., increase in operating costs. The full-crew laws have been extremely costly: the law of small New Jersey alone added an operating cost of something like \$400,000 annually. Hence it is with deep satisfaction that one may look upon the provisions of the recent Federal law which vest exclusively in the Interstate Commerce Commission regulatory functions formerly exercised in common with or exclusively by the states. The conflict between Federal and state authority began immediately after the grant of increased rates by the Interstate Commerce Commission. Most of the state public utility commissions refused to sanction proportionate

intra-state rate increases and have carried their opposition into the courts. The litigation is still pending, so that a series of new Supreme Court decisions similar to the Shreveport and the Minnesota Rate Cases is awaited before the validity of the Interstate Commerce Commission's supreme rate-making power conferred by the Transportation Act is finally determined.

The grant of exclusive financial control to the Interstate Commerce Commission is likewise opposed as unconstitutional, by several of the states, though in this matter the opposition is not persistent, and is likely soon to disappear altogether.

The labor sections of the Transportation Act are likewise undergoing a serious test. The results thus far have been disappointing. As a means of settlement of the railroad labor problem, the new legislation is but a step toward a much-desired end. The measure, as finally enacted, however, does not amply protect the public or the railroads against the strike evil. It merely makes provision for a system of regional labor boards of adjustment, which, in a more or less haphazard way, had existed previous to government railroad operation. A national labor board of appeal, composed equally of representatives of employees, of the railroads, and the public, all appointed by the President, was created with power both to hear and determine disputes and to initiate investigations. The decisions of this National Board are not enforced by penal provisions. In view of the inability of previous national labor-adjustment boards to settle railroad labor disputes satisfactorily, it may be assumed that the public is not yet amply protected from railroad labor disturbances.

Thus far the labor adjustments formulated by the National Labor Board have not brought satisfaction to either the employees or the employers. After the return to private operation, the railroads naturally sought relief from the national labor agreements and other concessions to labor made by the Railroad Administration. These agreements, which covered the shop crafts as well as train operatives, proved exceedingly costly and in accordance with the claims of railroad officials, constituted a large factor in producing the abnormally high operating ex-

penses. The national agreements are opposed by the carriers chiefly for two reasons. First, they create a universal yardstick to which all carriers regardless of peculiar and widely varying operative and financial conditions must conform. Secondly, they "unionize" all railroad labor, including shop employees, many crafts of which had formerly worked under local regulations and had not the support of powerful national organizations. After the return to private operation, it was argued by the carriers that the national labor agreements were in reality not incumbent upon the railroad companies, since the companies were never parties to the contract. The railroads contended, moreover, that neither the Constitution nor any statute empowers Congress to compel employment of adult male labor in private occupations at a fixed wage rate.

After extended hearings in which both railroad officials and employees took part, the Railroad Labor Board formally set aside the national agreements. The Board's decision, however, sets up certain rulings in relation to railroad labor which are causing serious difficulties. The decision enforces "system" collective bargaining and establishes the rule that in local disputes and arbitrations "the majority of each craft or class of employees shall have the right to determine what organization shall represent members of such craft or class". The effect of this is likely to establish unionism on a national basis in all railroad crafts, since in view of the fact that local craft unions are under the jurisdiction and control of the national labor organizations, national uniform standards can readily be set up and again enforced.

For years, the leading railroads, in dealing with their employees in certain crafts (particularly shop employees) have adhered to the "open shop" principle. They have accordingly retained both union and non-union employees and if union wages and working conditions were adopted, they were not enforced as the outcome of direct agreements with the national labor organization, but were set up merely as each individual company's own "shop rules". It is only by this plan that the railroads can avoid domination by the national labor organizations in establishing wages and working conditions among their

employees. The threatened destruction of the "open shop" principle by the Labor Board may mean a continuation of a uniform national standardized wage scale and working conditions for railroad labor in all sections, regardless of differences in the operating problems and the financial conditions of individual companies.

The dispute of the Pennsylvania Railroad with the National Labor Board illustrates the difficulties in the settlement of railroad labor disputes under the provisions of the Transportation Act. The Pennsylvania Railroad in accordance with its old-time practice, made arrangements with its employees concerning working conditions and the settlement of disputes. The Labor Board has ordered these arrangements set aside on the ground that the company had no legal authority to divide its system into regions and require the employees to elect regional representatives. They also ruled that the election of employees' representatives should be by open and not by secret ballot. The railroad company's officials maintain that unless the regional method of establishing wages and working conditions as contrasted with the "system" plan covering all the company's lines is maintained, the same conditions will prevail as existed under the recently abolished national agreements.

## II

In view of the present difficulties in the railroad situation the question is naturally asked, "Is the Transportation Act of 1920 a failure?" Any answer must take into consideration present political and economic conditions in reference to the various provisions of the law. As a piece of legislation, the Act is too far-reaching in its proposed remedies and regulations to merit at this time general condemnation. This is essentially the conclusion drawn from the hearings before the Senate Committee on Interstate Commerce. The Senate inquiry has two prime purposes, viz.: (1) to ascertain the causes of high railroad operating costs, and (2) to estimate the effect of the increased freight rates on both the carriers and the shippers. There has been nothing in the investigation suggesting railroad nationalization or a return to government railroad operation.

The causes of the high operating costs appear to have been the most pertinent part of the inquiry. Adequate data regarding the direct or indirect effect of general rate increases on railroad traffic or on the general business of the country are lacking. As already pointed out, neither the government nor the railroads have any research organization which has this information at hand. Consequently the only evidence of the effect of the higher rates on traffic that has been thus far presented to the committee has been in the form of personal opinions, guesses and biased deductions. As a result of the widespread business depression various groups of shippers and producers have been exerting political pressure to have rates on their particular commodities reduced in order to promote their own peculiar interests, regardless of the effect thereof on general welfare or on railroad income. Thus, eastern grain rates were reduced early in August twenty-five per cent for a period extending to the end of 1921 in the belief that this action would promote the export grain movement and aid the western agricultural sections. Reductions of rates on building materials, iron and coal products are also likely to be put into effect. The adjustment of freight rates to favor certain classes of producers is a "robbing Peter to pay Paul" policy that may have serious disturbing effects on general business.

The attitude toward the Transportation Act assumed by the railway executives at the Senate hearings is indicated in the statement of Mr. Thomas De Witt Cuyler, Chairman of the Association of Railway Executives. This statement makes it plain that the railroads are satisfied as a whole with the Transportation Act of 1920. The failure to earn a fair return on investment under the "statutory" rates and the heavy falling-off of traffic should not be taken as evidence that the Act is ineffective in solving the railroad problem. The blame for the failure lies with the Railroad Administration. This governmental agency, through its disruption of railroad operating methods and traditions, through its wasteful policies and through its national agreements with railroad labor organizations, has saddled a burden on the companies, which they are not able to shuffle off without difficulties and delays. Moreover, the increased rates

granted by the Interstate Commerce Commission last August have not balanced the higher wage rates granted at the same time by the Labor Board, for while labor costs increased 115 per cent the gross revenues increased 54 per cent. As labor costs consume approximately 70 per cent of railroad revenues, there is thus a considerable gap between income and outgo.

Briefly, the testimony of Mr. Julius Kruttschnitt, President of the Southern Pacific Company, and the other railroad executives who followed him as witnesses before the Senate Committee, resolves into the following points:

(1) Heavier railroad operating costs are not caused by lower efficiency, since statistics show that in 1920 an increased volume of freight traffic was carried with fewer freight train-miles. Moreover, the miles run per freight car per day were greater in 1920 than in 1919 or 1918 (years of government operation), and the average tonnage per loaded freight car was also greater. Nothing is said, however, regarding the costs by which these results were obtained. Statistics indicating efficiency, to be conclusive, should be accompanied by figures proving economy in operations. Heavier train loads and high speed may be directly opposed to lower costs and greater profits.

(2) The national labor agreements inherited from the Railroad Administration and continued in force after the return to private ownership not only caused pronounced and excessive wage advances, but because of strict classifications of employees, the elimination of piece work, and the adoption of "union rules" and regulations also caused higher and disproportionate labor costs. Consequently, wage payments are tending to consume more and more of the railroad dollar.

(3) The poor physical condition of the railroads and their equipment at the close of government operation necessitated heavy maintenance expenditures and at the same time handicapped the lines in the efficient and economical performance of the transportation service. The operating cost per unit of traffic under these circumstances would naturally be in excess of the cost under normal conditions.

(4) The scattering throughout every section of the country of the railroad cars owned by the individual companies during

the period of government operation resulted in a large movement of empty cars when each company began to draw its rolling equipment to its own lines. This extra expense, together with the necessity of repairing equipment that had been neglected and misused by the leasing lines, resulted in a considerable addition to total railroad operating expenses.

(5) Through an accumulation of restrictive legislation, such as the "long and short haul" clause of the Interstate Commerce Act, the Panama Canal Act (taking away from the railroads the control of steamship lines) and similar measures, the railroad companies have not been able to meet the competition of other transportation agencies. Hence they have lost traffic. The increasing use of motor trucks (operating without cost of right-of-way or of any fixed investment) is also causing serious losses of short-haul traffic. It is thus the complaint of the railroad executives that the services of their companies are unjustly discriminated against.

### III

What are the remedies for the existing unfavorable conditions? The railroad executives in their testimony suggest several changes in national railroad policy, some of which are not likely to meet with congressional sanction. The executives, be it remembered, offered no serious opposition to the recently enlarged powers of the Interstate Commerce Commission, preferring this concentrated control to conflicting and annoying state regulation. The present railroad opposition to administrative control is confined largely to the enforced subjection to obnoxious labor-union rules. It is proposed, therefore, by the railroad executives that the Labor Board permit a prompt return to pre-Federal-control working conditions. In the words of Mr. Kruttschnitt:

It is imperative to remove the waste and inefficiency fastened upon the railroads by rules and working conditions made by men who were indifferent to the future of the properties, and in the negotiation of which railroad owners had no voice. It is an essentially preliminary step in any effort toward the realization of conditions which make it possible for the railroads to live.

Other proposals of relief comprise the repeal of the "full crew" laws and other state and Federal statutes saddling additional operating costs on the carriers. Discriminations against the railroads in favor of water carriers should be removed and the "long and short haul" clause of the Transportation Act repealed or modified. Rate adjustments covering single commodities or groups of commodities should be made when there is evidence that the increased rates have diminished traffic or have interfered with established market competition.

Wage reductions, changes in working conditions and adjustments of rates for the production of greater revenues, however, do not promise sufficient financial relief. Economic wastes in railroad operations require elimination. As Mr. S. Davies Warfield, President of the National Association of Owners of Railroad Securities, has pointed out, American transportation has outgrown the system under which it now operates and only a recognition of this fact "will save them [the railroad companies] from being swallowed up in the demoralization that Government operation and after-war readjustment has brought on them." The Security Owners, through Mr. Warfield, accordingly have proposed a plan of coördination of services and facilities under Government supervision. It is not expected that the general approval of this plan by many railroad executives and by the public will be received immediately, but whatever action is finally taken, it is an undisputed fact that intensive and unhampered economy is needed to save the roads from general bankruptcy and ultimate government operation.

The proposals of the National Association of Owners of Railroad Securities were brought before the Senate Committee in the testimony of Mr. S. Davies Warfield and Mr. Forney Johnston, president and counsel respectively of the Association. Testimony to the same effect was also presented by Mr. Walter Fisher, a member of President Taft's Railroad Securities Commission, Mr. John F. Wallace, a distinguished railroad engineer, and Mr. W. A. Colston, Director of Finance of the Interstate Commerce Commission. Mr. Warfield's plan as outlined in the testimony, proposes the creation of a national railway service board to act in coöperation with and under the supervision of

the Interstate Commerce Commission. This board is to be composed partly of railroad officials selected from among the territorial groups of railroad officials, and partly of other citizens, preferably experienced business men and financiers. In each territorial group there is to be an advisory board presided over by a member of the national board. The national board is to be subdivided into two separate divisions: (1) the finance and administrative division, and (2) the railway officials division. The finance and administrative division is expected to be composed of officials of leading life-insurance companies, savings banks, investment and business institutions having a direct interest through ownership of securities or otherwise in the welfare of the railroad companies. The railway officials' division is to be composed of members serving on the divisional railway boards, who are to be elected by the carriers in the respective groups, with the approval and confirmation of the Interstate Commerce Commission. All decisions of the board or of the divisional groups in matters over which the Commission now has jurisdiction under the Transportation Act will be under the regulatory supervision of the Interstate Commerce Commission.

The primary purpose of the plan is the coördination of railroad service and railroad expenditures in order to eliminate the economic wastes of transportation and to encourage and facilitate the joint use of railroad property for public convenience and economy. The proposed new organization, therefore, would take the place of the present numerous voluntary railroad operating associations and, at the same time, relieve the Interstate Commerce Commission of much direct regulatory and supervisory work recently saddled on it by congressional legislation. If successful, the plan would avoid evils of direct Federal railroad control and operation, of which the nation has had a sad experience during the late war.

An illustration of effective coöperation of the railroads and the Interstate Commerce Commission in the provision of adequate standardized equipment, is found in the National Railroad Service Corporation, an organization created, through amendment of the Transportation Act, under the joint auspices of the

Interstate Commerce Commission and the National Association of Owners of Railroad Securities. This corporation was formed to finance the purchase of new rolling equipment for the railroads which were unable to borrow at reasonable rates in the general money market. Under the plan of financing adopted, the Interstate Commerce Commission advances from the revolving fund provided under the Transportation Act, forty per cent of the cost of the new equipment. The remaining sixty per cent is furnished by the Service Corporation in exchange for a like amount of equipment trust obligations of the borrowing railroad maturing over a period of fifteen years. As security for the government's share of the financing, there are deposited with the Commission, "deferred" or second-mortgage notes having the same maturity dates as the first-mortgage equipment trust certificates. The latter are sold to investors and financial institutions. Several of the large insurance companies now hold large blocks of these securities. The National Railway Service Corporation is a non-profit-making organization, merely acting as the agency of the Interstate Commerce Commission in the matter of loans to railroads for the purchase of equipment.

Among the specific problems facing an organization created with a view to eliminating wastes and to encouraging and promoting further economies in railroad operation, are those relating to (a) the standardization and use of equipment, (b) the joint use of shops, yards and terminals, (c) the coöperative purchase of supplies, and (d) the harmonizing of traffic relationships. Many of these matters are under the jurisdiction of the Interstate Commerce Commission, but it is readily apparent that a governmental agency such as the Commission, acting in both a judicial and executive capacity, is incapable of adequately handling these problems without the direct assistance and coöperation of an organization composed of active railroad operating officials and practical business men. Should the railroads themselves not effect such an organization satisfactorily to all concerned, (including the Commission, security owners, shippers and the public), it may be found advisable to create by statute as an agency of the Interstate Commerce Commission a board of coöperation and research such as has already been appointed

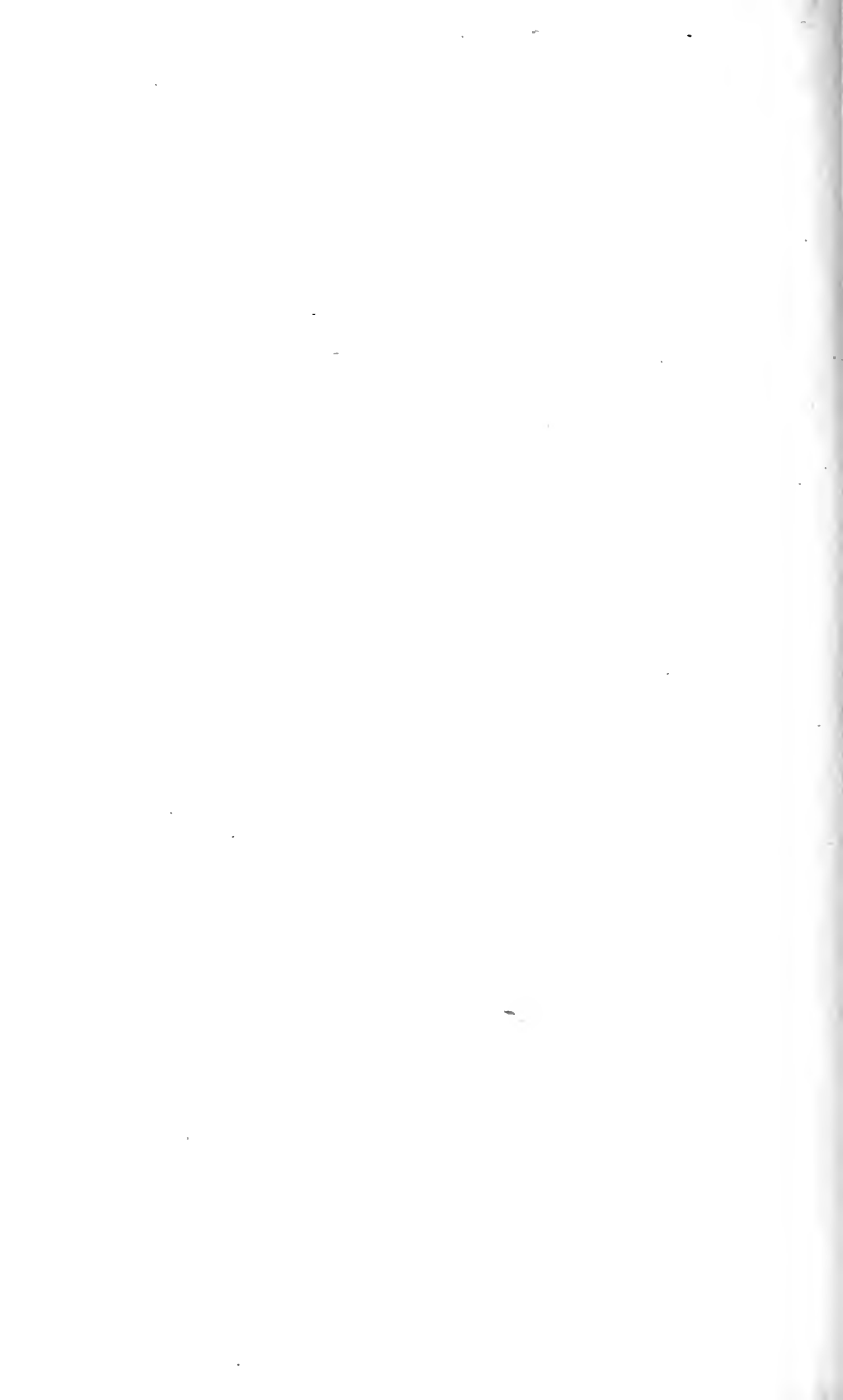
by Mr. Warfield's organization. This board should be concerned primarily with broad problems of railroad operation and economic policies, and in its advisory capacity could propose to the Commission desirable operating changes and rate adjustments which, under the existing competition among individual carriers, are frequently held in abeyance.

Experience has proven that the country cannot look to a thousand or so railroad executives, about 200 alone representing the larger systems, to reach agreements and conclusions among themselves, respecting the coördination of facilities and service, or the introduction of economies essential to guarantee the most efficient administration and methods of transportation under private management. Unless these conditions are recognized and relieved through definite authority the most approved provisions of the Transportation Act of 1920 will be rendered ineffective. And if the interest of railroad security owners were alone considered, it might be better for them to have the lines taken over by the government and paid for under fair methods for determining their value rather than that there should be a continuation of the present unsatisfactory railroad conditions.

A. M. SAKOLSKI.

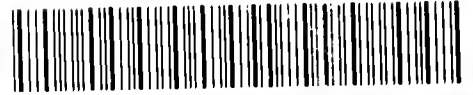
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